

In the Matter Of:

UNITED STATES vs STATE OF GEORGIA

1:16-CV-03088-ELR

FRANK BERRY

July 29, 2022



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July 29, 2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO.
1:16-CV-03088-ELR

STATE OF GEORGIA,

Defendant.

VIDEOTAPED DEPOSITION OF FRANK BERRY

Taken on behalf of the Plaintiff,
pursuant to Notice and agreement of counsel,
in accordance with the Federal Rules of Civil Procedure
before Richard Bursky, RMR, CRR, CRC
Certified Court Reporter
At 2 Peachtree Street, Atlanta, Georgia
On July 29, 2022, between the hours of
9:26 a.m. and 4:03 p.m.

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1 APPEARANCES OF COUNSEL:

2
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ALSO PRESENT:

BRANDON BRANTLEY, Videographer

PAUL NORMAN, ESQUIRE, DCH General Counsel

(Continue on following page)

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ALSO PRESENT VIA ZOOM:

KELLY GARDNER, ESQUIRE, Department of Justice
LAURA CASSIDY TAYLOE, ESQUIRE, Department of Justice
MICHELLE TUCKER, ESQUIRE, Department of Justice
RENEE WOHLLENHAUS, ESQUIRE, Department of Justice
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1 THE VIDEOGRAPHER: This is the video
2 deposition of Frank Berry being taken in the matter
3 of United States of America versus the State of
4 Georgia. Today's date is July 29, 2022. The time
5 on the record is 9:26 a.m.

6 My name is Brandon Brantley. I am the
7 videographer. Richard Bursky is the court
8 reporter.

9 Counsel, please introduce yourselves for the
10 record after which the court reporter will swear in
11 the witness.

12 MS. COHEN: Fran Cohen for the United States.

13 MR. HOLKINS: Patrick Holkins for the United
14 States.

15 MS. HUGHES: Aileen Bell Hughes for the United
16 States.

17 MR. BELINFANTE: Josh Belinfante for the State
18 of Georgia.

19 FRANK BERRY,
20 having been first duly sworn, testifies as follows:

21 MS. COHEN: Good morning.

22 THE WITNESS: Good morning.

23 MS. COHEN: Josh, we have been stipulating
24 that all objections except as to form and motions
25 to strike are reserved until time of trial. Is

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1 that acceptable to you?

2 MR. BELINFANTE: It is, thank you.

3 MS. COHEN: And the United States is willing
4 to waive notarization and the transcript can be
5 signed within 30 days under penalty of perjury.

6 MR. BELINFANTE: Okay, that's agreeable.

7 EXAMINATION

8 BY MS. COHEN:

9 Q So are you represented by counsel here today,
10 sir?

11 A I am.

12 Q Who is that?

13 A Josh Belinfante and the Robbins firm.

14 Q When did you first learn of this deposition?

15 A Roughly a month ago, maybe, maybe a little bit
16 longer than that; somewhere around that time. I don't
17 have the exact date. And then I was served last week
18 when I was in New York.

19 Q How did you find out about it?

20 A I am trying to remember whether it was
21 somebody from the Department or whether it was the
22 Robbins firm who notified me. I think it was the
23 Robbins firm who notified me that I would be deposed.

24 Q Who was it at the Robbins firm?

25 A I believe it was Javier.

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1 Q Javier Pico Pratt?

2 A I believe that is correct.

3 Q Did you have any -- did he call you on the
4 phone or did he email you, or how did he make contact
5 with you?

6 A I believe via email. I believe a phone call
7 and then sent me an email afterwards.

8 Q What did he say to you?

9 MR. BELINFANTE: Objection, attorney-client
10 privilege.

11 You don't need to answer that.

12 BY MS. COHEN:

13 Q How long did you speak to him?

14 A Less than a minute.

15 Q After that, did you have a more substantive
16 conversation about the deposition with any lawyer from
17 the Robbins firm?

18 A No, not of -- no, just to be prepared.

19 Q Did you prepare for the deposition with
20 anyone?

21 A I had 15 minutes of preparation, maybe just to
22 walk through the steps of what this would be like.

23 Q Where did that take place?

24 A My home, I did it video.

25 Q You did a Zoom with someone from the Robbins

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1 firm?

2 A Correct.

3 Q Were you shown any documents at that time?

4 A No.

5 Q Did you speak to anyone else concerning
6 today's deposition?

7 A No.

8 Q Commissioner, have you ever had your
9 deposition taken before?

10 A I've had a deposition, not this deposition.

11 Q Where did you have it? What kind of case was
12 that in?

13 A A lawsuit from 2002 with an issue dealing with
14 the Juvenile Justice Department.

15 Q So then you probably maybe don't remember the
16 rules, so I'll just go over them quickly.

17 If you don't understand a question, you can
18 ask me to rephrase it.

19 A Okay.

20 Q If you want to take a break, that's fine. You
21 need to ask for it so that we can put it on the record.

22 A Okay.

23 Q And I'll ask that you not take a break while a
24 question is pending.

25 A Okay.

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1 Q And counsel may make objections to preserve
2 objections for trial. Unless there is an instruction
3 not to answer a question, we will expect you to answer
4 even if there is an objection.

5 And then responses have to be verbal, I think
6 you got the hang of that, so that Mr. Bursky can take
7 them down.

8 A Yes.

9 Q Only one of us can speak at a time, so I'll
10 try not to jump on your answer with new questions and I
11 hope you will do the same for me.

12 A Okay.

13 Q So when were you born, sir?

14 A July 6, 1966.

15 Q What has been your formal education since
16 leaving high school?

17 A I have a master's degree in child development
18 and family relations from Florida State University.

19 Q Were you also an undergraduate at Florida
20 State University?

21 A I was.

22 Q What did you concentrate in there?

23 A Child development, family relations with a
24 minor in social work.

25 Q What year was your master's degree?

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1 A 1991, I believe.

2 Q 29 years ago?

3 A Yes.

4 Q Do you have any professional credentials,
5 licenses or certifications?

6 A No.

7 Q What has been your employment history since
8 you received your master's degree in 1991?

9 A I worked for the Leon County Public School
10 System.

11 Q In what capacity?

12 A I was a postgraduate school, I was the
13 director of a before and after school program for an
14 elementary school.

15 Q What years was that?

16 A Postgraduate would have been partly through
17 the year of 1991.

18 Q So was that in Florida?

19 A That was in Florida.

20 Q Then how were you employed after the Leon
21 County after school program?

22 A For the first six months, I worked for Duke
23 University doing a research study looking at the
24 prevalence of mental health in substance use disorders
25 among children in the rural mountains of North Carolina

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1 for six months, working out of Silva, North Carolina.

2 Q Then after the work that you did in North
3 Carolina, how were you --

4 A There was more work in North Carolina.

5 Q Oh, there was, okay. After the work you did
6 in the rural mountains on this research project, what
7 was the next work that you were involved with?

8 A I worked for Smoky Mountain Mental Health from
9 the end of 1991 through 1995 with children with serious
10 emotional disturbance who were involved in a class
11 action lawsuit with the United States Department of
12 Justice called the Willie M program lawsuit and I was a
13 case manager.

14 Q Who was your employer?

15 A Smoky Mountain Mental Health.

16 Q Was that a community mental health center?

17 A Correct.

18 Q What age were the children you worked with?

19 A Five through 18.

20 Q Was it a residential facility or --

21 A No.

22 Q A day facility?

23 A Community-based.

24 Q A day program that students would come to in
25 the morning and then leave?

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1 A That was one component of the program. These
2 were children that were being served in the community,
3 so living in foster homes -- we had a day program, they
4 had a day program, but we served children in their own
5 homes, in their own schools, in their own communities.

6 Q I see. So it was a health care provider?

7 A It was a behavioral health care provider.

8 Q Behavioral health care provider.

9 A Mental health care provider.

10 Q Understood. And what was your role?

11 A I was a case manager.

12 Q Case manager. And did you also perform any
13 behavioral health services?

14 A No. Case management only.

15 Q After the Smoky Mountain Health Care facility,
16 how were you next employed?

17 A The child and adolescent mental health
18 director for Rockdale County, for the
19 Gwinnett-Rockdale-Newton Community Service Board.

20 Q Was that in 1995 that you joined the
21 Gwinnett-Rockdale-Newton Community Service Board?

22 A Yes.

23 Q And then how long did you remain employed by
24 the Gwinnett-Rockdale-Newton Community Service Board?

25 A Until 1999.

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1 Q What was your job title?

2 A Director -- when I left?

3 Q For the time period that you were there
4 between 1995 and 1999, what were your job titles with
5 the Gwinnett-Rockdale-Newton CSB, whatever? It
6 probably wasn't a CSB.

7 A It was.

8 Q It was, all right.

9 A I was, I started as director of child and
10 adolescent services for Rockdale County. And when I
11 left, I was the director of child and adolescent
12 services for Gwinnett, Rockdale and Newton Counties.

13 Q What were your responsibilities as director of
14 child and adolescent services?

15 A To oversee all behavioral health services with
16 the teams that were responsible for the delivery in
17 Gwinnett, Rockdale and Newton Counties.

18 Q After leaving in, the Gwinnett-Rockdale-Newton
19 program in 1999, where did you go next?

20 A I went to the Georgia Department of Juvenile
21 Justice.

22 Q What role did you play with the Georgia
23 Department of Juvenile Justice?

24 A I started there as the director of revenue
25 maximization and enhancement, and finished there as the

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1 State director of behavioral health.

2 Q So you were director of revenue maximization
3 at the Department of Juvenile Justice?

4 A Correct.

5 Q What does that entail?

6 A Looking at creative financing tools for the
7 Department of Juvenile Justice to be able to serve
8 children in their own communities rather -- developing
9 community-based alternatives so that the children could
10 have alternatives rather than going into long-term --

11 Q That was your mission?

12 A -- YDCs. That was our...

13 Q Just out of curiosity, what were the types of
14 financing vehicles that you developed?

15 A Title 4E and Medicaid, using Federal funds,
16 enhance the, the enhancement of using Federal funds in
17 the juvenile justice system to bring in new funding
18 streams so that we can create more community-based
19 alternatives.

20 Q Was that new in the years 1995 to 1999?
21 Excuse me, what were your dates?

22 A 1999 through 2004. It wasn't new, but it
23 wasn't very robust. So our mission was to grow that
24 opportunity.

25 Q Then when you became State director of

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1 behavioral health, was that for the same agency?

2 A Yes.

3 Q What was your job as State, what were your
4 responsibilities as State director of behavioral
5 health?

6 A Overseeing all of the youth development campus
7 and regional youth development centers, behavioral
8 health services for children that were in those
9 facilities.

10 Q Where was the main campus?

11 A Our main office was in Avondale, Georgia, that
12 DJJ headquarters, but we had campuses across the State
13 of Georgia.

14 Q Across the State.

15 After your service as State director in the
16 Juvenile Justice Bureau, how were you next employed?

17 A I went to work for the
18 Gwinnett-Rockdale-Newton Community Service Board.

19 Q Was that the same employer as previously or
20 had it been reorganized?

21 A That was the same employer as previously.

22 Q What year was that?

23 A 2004 through 2012.

24 Q At some point, was that reorganized as
25 Viewpoint?

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1 A Correct.

2 Q Was that between 2004 and 2012 or was it after
3 that?

4 A Yes, that was during that period of time.

5 Q So tell me about the entity
6 Gwinnett-Rockdale-Newton CSB. When was that founded?

7 A I believe 1993.

8 Q Under that name?

9 A Gwinnett-Rockdale-Newton Community Service
10 Board.

11 Q And then how did it change?

12 A We rebranded, when I became CEO we rebranded
13 to Viewpoint Health.

14 Q Was that in 2009?

15 A I don't recall the exact date.

16 Q Approximately?

17 A Approximately.

18 Q What was your original job title when you took
19 this job?

20 A At Viewpoint Health?

21 Q No, at Rockdale-Gwinnett-Newton.

22 A I don't recall the -- when I went back, I
23 don't recall what the original job was. I finished as
24 chief operating officer.

25 Q Chief operating officer?

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1 A Before I became CEO, I ultimately was CEO of
2 Viewpoint Health, but I don't remember when I went back
3 there, what my title was when I went back there.

4 Q Did you move through various administrative
5 jobs prior to becoming COO at Gwinnett-Rockdale-Newton?

6 A Two, I was COO and I may have been director of
7 system of care initiatives when I first went back.

8 Q What year did you become COO, do you know?

9 A That would have been in like 2008, I believe.

10 Q And then the following year, the organization
11 was rebranded as Viewpoint?

12 A No. I think -- this is going back a long
13 time. We rebranded after I became CEO and I believe I
14 became CEO in either 2008 or 2009. I think it was
15 2009, and we rebranded after I became CEO.

16 Q What was the reason for the rebranding?

17 A To modernize the agency and prepare for the
18 health care future, the health care environment of the
19 future and modernize.

20 Q Did you supervise Debbie Gay in this role?

21 A I don't recall.

22 Q Do you know Debbie Gay?

23 A I don't, I don't recall.

24 Q You don't know an employee of the Georgia
25 Department of Health named Debbie Gay?

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1 MR. BELINFANTE: I object to form.

2 Q Excuse me, Department of Education named
3 Debbie Gay?

4 A I don't recall.

5 Q So, Commissioner, I am going to ask you if you
6 are familiar with some certain terms that I've seen in
7 the extensive productions by DBHDD and DCH. And I am
8 interested in your definition, that is, how you used
9 the term; how you understood it, if you did, during the
10 time periods when you were doing the work. After you
11 became CEO of Viewpoint and it was rebranded, did you
12 remain there until 2012?

13 A Yes.

14 Q How long did you -- what was your next job?

15 A Commissioner for the Georgia Department of
16 Behavioral Health and Developmental Disabilities.

17 Q How long did you remain as Commissioner of
18 DBHDD?

19 A From August 13th of 2012 through December 1st
20 of 2016.

21 Q Did you continue to be employed by the State
22 of Georgia after you left the agency DBHDD?

23 A Yes.

24 Q How were you next employed?

25 A I was the Commissioner for the Georgia

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1 Department of Community Health.

2 Q How long did you remain as Commissioner of the
3 Georgia Department of Community Health?

4 A From December 1st of 2012 through June either
5 30th or 31st, I can't remember how many days there are
6 in June.

7 Q I am going to interrupt you for a minute just
8 so the record doesn't get tangled up. I think you said
9 that you left DBHDD on December 1st --

10 A Right.

11 Q -- of 2016.

12 A Right. And then I started December 2nd, then,
13 of 2016 -- no, I am sorry, I left the last day of
14 November of 2016 and started December 1st of 2016 at
15 the Department of Community Health.

16 Q How long did you remain at the Department of
17 Community Health?

18 A Until the last day of June 2021.

19 Q Did you serve there as Commissioner?

20 A I did.

21 Q The entire time?

22 A Yes.

23 Q And then as Commissioner you were head of the
24 agency?

25 A Yes.

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1 Q What were your reasons for leaving?

2 A I was tired.

3 Q So you resigned as of June 30th?

4 A I did -- resigned, retired, yes.

5 Q So let me ask you, during the time period that
6 you were Commissioner for DBHDD and then of DCH, I am
7 going to ask you about these terms and how you used and
8 understood them and it may also be colored, and you may
9 tell me if it is, by your experience at Viewpoint and
10 Rockdale Gwinnett Newton prior.

11 So serious mental illness, are you familiar
12 with that term?

13 A Yes.

14 Q And have you heard it abbreviated as SMI?

15 A Yes.

16 Q How did you understand that term and use it?

17 A For individuals that had serious and
18 persistent mental illness, for me it meant long-term
19 chronic behavioral health challenges.

20 Q Are you referring to individuals who have been
21 diagnosed, have a diagnosis of mental health?

22 A Yes.

23 Q After -- and then I am going to also ask you
24 if you are familiar with the term emotional and
25 behavioral disturbance, EBD.

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1 A Yes.

2 Q How do you understand that term?

3 A Children in particular that have serious and
4 emotional disturbances, meaning significant behavioral
5 health challenges.

6 Q Is that a diagnosis that qualifies individuals
7 for certain services?

8 A I wouldn't say that's the diagnosis. I would
9 say that's the categories that the diagnoses, if that's
10 the big umbrella, then there are many other diagnoses.

11 I don't know that is a true clinical
12 diagnosis, but there are diagnoses that would populate
13 the term, serious emotional disturbance.

14 Q Can you name some of the diagnoses that in
15 your view would populate the umbrella EBD?

16 A Yes, attention deficit hyperactivity;
17 significant attachment disorders; PTSD; post-traumatic
18 stress disorder for some children. Those are just a
19 few examples.

20 Q Are you also familiar with the GNETS program?

21 A Yes.

22 Q What is the GNETS program?

23 A Alternative school settings for children with
24 emotional challenges, with behavioral and severe
25 emotional disturbance challenges.

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1 Q Does the acronym stand for the Georgia Network
2 of Educational and Therapeutic Services?

3 A I can't confirm that. I've just known it as
4 GNETS.

5 Q Support, rather than Services.

6 How did you become familiar with GNETS?

7 A With the formal term GNETS, when the State was
8 served with a potential lawsuit.

9 Q Was that in 2016?

10 A I believe so, around that time.

11 Q Actually, there were two separate events.

12 A Okay.

13 Q Let me test your memory.

14 A Okay.

15 Q One was the Department of Justice, my
16 employer, sent a letter of findings --

17 A Okay.

18 Q -- with regard to the GNETS program, and that
19 was in July of 2015.

20 A Okay.

21 Q And then thereafter in 2016, the Department of
22 Justice commenced litigation against the State of
23 Georgia. So was it the 2015 letter of findings or the
24 2016 lawsuit that you are referring to?

25 A I don't recall which one, but I know it was

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1 one of those. But I don't recall which one.

2 Q How did you become familiar with it at that
3 time?

4 A Reading about it in the newspaper and then
5 just hearing about it, that the State was being sued,
6 or potential litigation.

7 Q You heard about it from counsel at DBHDD?

8 A I don't recall who.

9 Q Let me -- you had never heard the acronym
10 GNETS prior to 2015 or 2016?

11 A I don't recall. I always referred to them as
12 the Psycho Ed Centers, so that was when I was in
13 Gwinnett-Rockdale-Newton, we referred to them as Psycho
14 Ed Centers.

15 Q And I think the Georgia Psycho Ed Centers was
16 the prior name of the program.

17 A Okay.

18 Q So when did you first learn of the Georgia
19 Psycho Ed Centers?

20 A In 1995.

21 Q In what context?

22 A There were children that we were serving in
23 the Gwinnett-Rockdale-Newton Community Service Board
24 who would attend the Psycho Ed Centers.

25 Q Did you learn anything else about the program

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1 at that time?

2 A Other than it was designed to help children
3 who were being placed out of their home schools to go
4 there, so that's what I knew about them.

5 Q Did you know what the entrance criteria were
6 for entrance into the Georgia Psycho Ed Center program?

7 A They had to have significant behavioral
8 challenges.

9 Q How did you know that?

10 A Because our team members would at times refer
11 children -- our team members, after referral was made
12 by the school systems to get them into the GNETS
13 program, our clinicians who were doing care
14 coordination would keep in touch with them while they
15 were enrolled in those programs. So we wanted to stay
16 in touch with those children and not lose contact with
17 them.

18 Q So your care coordinators became aware of the
19 situation after recommendation had been made by the
20 local school district --

21 A Correct.

22 Q -- for placement? Did you ever visit a
23 Georgia Psycho Ed --

24 A Yes.

25 Q -- facility?

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1 A Yes.

2 Q Which one?

3 A I believe it was called Shadow Rock in
4 Gwinnett County.

5 Q When was that?

6 A I don't recall. It was somewhere between 1995
7 and 1999.

8 Q How long was your visit?

9 A I don't recall.

10 Q What was the occasion of the visit?

11 A I don't recall.

12 Q That is the only time you have been in a GNETS
13 or Georgia Psycho Ed facility?

14 A I believe so.

15 Q And your role then was administrative; is that
16 correct?

17 A Yes.

18 Q Either COO or something close to it?

19 A During that period of time, I was director of
20 child and adolescent services.

21 Q So you went as director of child and
22 adolescent services?

23 A Yes.

24 Q You were not a clinician?

25 A No.

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1 Q But did clinicians report to you as director
2 of child and adolescent services?

3 A Yes.

4 Q What certifications did those clinicians have
5 that reported to you during your, the period when you
6 were director of child and adolescent services?

7 A Licensed social workers, Ph.D. level
8 psychologists, LPCs, licensed practicing counselors,
9 and that's it.

10 Q Did you have, apart from these clinicians that
11 you just described, did you have any other categories
12 of employees reporting to you during the time period
13 when you were director of children and adolescent
14 behavioral health?

15 A Directly reporting to me, no, because we had
16 local team members for each county that then reported
17 up to me.

18 Q I see.

19 A So we had behavioral aides, for instance, that
20 would report up to those local team leaders.

21 Q So you had regional team leaders?

22 A We had -- not regional, county team members.

23 Q County team leaders?

24 A Leaders.

25 Q That was for each of Gwinnett, Rockdale and

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1 Newton Counties?

2 A Yes.

3 Q Were they billing for their services with
4 Medicaid, through Medicaid?

5 A For the children that were Medicaid members,
6 yes.

7 Q Were they billing through public insurance
8 programs for all of the children?

9 A Not a whole lot of public insurance. The CSB
10 really didn't do much billing for public insurance.

11 Q So who --

12 A For commercial.

13 Q What was the funding source?

14 A Grant in Aid dollars. From '95 through 2007
15 Grant in Aid dollars, State Grant in Aid dollars, and
16 Medicaid.

17 Q How did that change in 2007?

18 A 2007, 2008, somewhere during that period of
19 time, care management organizations came into Georgia.

20 Q So how did that change the funding source?

21 A The Grant in Aid dollars was taken away and
22 you had to do contracts with care management
23 organizations.

24 Q Were the Grant in Aid dollars, did those come
25 from the State of Georgia?

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1 A Yes.

2 Q I think you said earlier there was a
3 rebranding to bring the organization into the modern,
4 the world of modern behavioral health; is that correct?

5 A Yes.

6 Q And was part of the purpose of rebranding to
7 enter into these contracts with care management
8 organizations?

9 A No.

10 Q So the change in financing sources that became
11 prevalent had nothing to do with the reorganization?

12 A No.

13 Q So in what aspects did the organization change
14 as part of rebranding?

15 A We were pushing to become more of a
16 comprehensive health care organization, so partnering
17 with federally qualified health centers, for instance,
18 and to make community mental health, to break down the
19 stigma of like children, for instance, or adults feel
20 like they were coming into a state-of-the-art health
21 care environment.

22 Q So it is as much a change in environment --

23 A Yes.

24 Q -- as it was a change in the organization?

25 A Yes.

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1 Q But you visited a GNETS facility, I believe,
2 before the rebranding?

3 A Yes.

4 Q And you don't recall why?

5 A No.

6 Q Was it your practice as the director of
7 clinical services for children and adolescents at the
8 CSB to visit other, to visit programs?

9 A Yes.

10 Q So did you visit other Department of Education
11 programs?

12 A I visited schools, but -- local schools at the
13 local level, not -- so I look at that a little bit
14 differently.

15 Q How is that? How do you look at it
16 differently?

17 A So to me, Department of Education is State,
18 local school systems are County.

19 Q I see.

20 A So I would visit schools, but I didn't view
21 that as working with the Department of Education. I
22 looked at that as working with the local school system.

23 Q You view GNETS as part of working with the
24 Department of Education?

25 A No, because I looked at the GNETS program or

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1 the Psycho Ed Center that I visited as part of the
2 Gwinnett County Public School System.

3 Q I see. So outside of Gwinnett County, did you
4 visit any programs for individuals with EBD?

5 A Yes.

6 Q Where?

7 A Not education programs, but around the State,
8 PRTFs.

9 Q And this was in your capacity as director of
10 child and adolescent services?

11 A Yes.

12 Q What did you observe when you visited the
13 GNETS facility?

14 A Classrooms, a school, I mean, classrooms with
15 children, that's what I observed.

16 Q Did they explain the program to you?

17 A I don't recall.

18 Q Do you recall anything that was said to you
19 about the program?

20 A I don't. I am sorry. I mean, it was long
21 time ago. I don't remember. I mean, I remember going
22 there, but I don't remember the discussion that
23 occurred while I was there.

24 Q And this was just a single-day visit?

25 A Yes.

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1 Q After your visit to the Georgia Psycho Ed
2 program center that you visited, and it was in Gwinnett
3 County?

4 A Yes.

5 Q After that visit, did the
6 Gwinnett-Rockdale-Newton CSB refer -- have clients who
7 were referred to GNETS -- I mean, to the Georgia Psycho
8 Ed?

9 A Yes.

10 Q What was the referral process by which a
11 student who was in a local public school and being seen
12 by a clinician at your CSB, what was the process by
13 which your clinicians would participate in a referral
14 to Georgia Psycho Ed?

15 A I don't believe that our clinicians had a role
16 in the referral. They were notified that a referral
17 had been made.

18 Q Understood. So are you familiar with the
19 individualized education plans?

20 A Yes.

21 Q And if I refer to them as IEPs --

22 A Yes.

23 Q -- we are clear?

24 A Yes.

25 Q Did your clinicians, and I am not just talking

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1 about Georgia Psycho Ed, I am asking a more broad and
2 general question, did your clinicians ever appear at
3 IEP proceedings?

4 A Yes.

5 Q On whose behalf?

6 A It would be a combination. At times on the
7 parents' behalf, they would ask for their clinician to
8 attend the IEP with them. And then at times the
9 schools would request the clinicians attend.

10 Q But your clinicians didn't play a role in
11 terms of whether a student was eligible to attend the
12 Georgia Psycho Ed GNETS program?

13 A My recollection was that the schools made that
14 determination. And our clinicians participated and
15 were asked questions about behaviors, but they did not
16 make recommendations. That was not their role.

17 Q Now, at this time, when you were director of
18 children and adolescent services, did you understand
19 that the Georgia Psycho Ed and GNETS program was
20 providing therapeutic services?

21 A Yes.

22 Q What were those services?

23 A Individual therapy, potentially, it was
24 whatever an IEP would indicate, because the schools had
25 the ability, if it was written up in the IEP, to be

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1 able to access those services in the school because of
2 the education service, supports that were available.

3 Q How did you learn that?

4 A I don't recall, just years of experience.

5 Q Did you ever meet any clinicians who worked
6 for the Georgia Psycho Ed program?

7 A Yes.

8 Q Who were they?

9 A I don't recall.

10 Q Did any of your staff ever leave to go to the
11 GNETS, Georgia Psycho Ed program?

12 A I don't recall.

13 Q Were you ever asked to recommend anyone for
14 employment in a GNETS or Georgia Psycho Ed facility?

15 A I don't recall doing that for the Psycho Ed or
16 GNETS. We did make recommendations for some of our
17 team members to go to be, work for the local Counties
18 like Department of Social Work, they went to become
19 school social workers, but I don't recall that they
20 went to the GNETS programs. But they went to various
21 Counties' social work departments.

22 Q Now, during your years at the CSB which I
23 understand were split by a transfer into the Juvenile
24 Justice program, but during your years at the CSB on
25 both sides of that transfer, did you ever recommend any

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1 of your clinicians to work for the State? You talked
2 about recommending clinicians to work for local or
3 county organizations.

4 A I don't recall. To the State or to the State
5 Department of Education?

6 Q I was referring to any State agency, if that
7 helps you answer the question.

8 A I don't recall.

9 Q What services were your clinicians providing
10 to children with emotional and behavioral disorders
11 during the period when you were at the -- periods when
12 you were at the CSB?

13 A Individual counseling, therapy, group
14 counseling therapy, outpatient services. We offered a
15 therapeutic foster care service. That was part of our
16 program.

17 Q In what sense, did you have a residential
18 treatment facility or --

19 A They were therapeutic foster homes.

20 Q Just working with the foster home?

21 A Yes.

22 Q Or your organization, the CSB, had therapeutic
23 foster homes?

24 A Prior to, from 1995 while I was there through
25 2000, through 1999, and then from 2004 probably through

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1 2005 or '6 we offered therapeutic foster care.

2 Q That was through group home facilities?

3 A No, families.

4 Q You would work with the families?

5 A We had foster families that had special
6 training --

7 Q I see.

8 A -- to become therapeutic foster care families.

9 Q And then one of the services that you would
10 provide was working with the foster families --

11 A Correct.

12 Q -- on an outpatient basis?

13 A Correct.

14 Q You said that the clinicians at
15 Gwinnett-Rockdale-Newton kept in touch or tried to keep
16 in touch with their former clients when they went into
17 the Georgia Psycho Ed program. Does that mean that it
18 was the practice to terminate the relationship with
19 Rockdale-Gwinnett-Newton CSB upon a referral to the
20 GNETS, Georgia Psycho Ed program?

21 A No. My recollection was we would try to stay
22 in touch because we were always hopeful that they would
23 come back to their home school, and we didn't want to
24 lose that relationship.

25 Q Understood. My question is a little

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1 different.

2 A Okay.

3 Q My question is, during the time period when
4 these individuals were assigned to the Georgia Psycho
5 Ed service, did your clinicians perform any clinical
6 services for them?

7 MR. BELINFANTE: I object to form.

8 You can answer.

9 A No.

10 BY MS. COHEN:

11 Q During that period, did you, when your
12 clinicians tried to stay in touch to preserve the
13 relationship, what steps did they take?

14 MR. BELINFANTE: I object to form.

15 You can answer.

16 THE WITNESS: I am sorry?

17 MR. BELINFANTE: I just said object to the
18 form, but you can answer.

19 THE WITNESS: Okay.

20 A They would visit the family when the child
21 would be home in the afternoon or evening. They would
22 do a home visit to just check in and keep -- our
23 position was we had developed, the team had developed a
24 relationship and we wanted to keep that relationship so
25 that when ultimately they came home, we wouldn't be

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1 starting from scratch.

2 And that clinician may have been the one
3 person that that child felt comfortable talking with.
4 So we felt it was really important to keep that
5 connection.

6 BY MS. COHEN:

7 Q So was the home visit, during the period when
8 the child was assigned to the GNETS-Psycho Ed program,
9 was the home visit for the purpose of providing
10 therapeutic services or was it something else?

11 A Something else. I would say, there is a
12 difference between care coordination, case management,
13 and delivering therapeutic services. So this was more
14 case management care coordination than, for instance,
15 an hour of individual therapy.

16 Q So with regard to the case management care
17 coordination services that you are describing, how were
18 those billed for?

19 A From the time during 1995 through '99 and 2004
20 that I can speak of through two thousand and probably
21 '6 or '7, they were billed through State grant in aid
22 dollars.

23 Q As a service?

24 A As a service.

25 Q How frequently would these visits be made?

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1 A Usually like once a month.

2 Q And the employees making the visits were not
3 clinicians, they were case managers?

4 A So it was kind of a hybrid model. You would
5 have -- we were deep believers that the clinicians
6 should do home-based work also to get a feeling for
7 what's going on in the home.

8 So you could have had credentialed, master's
9 level clinicians doing that home visit but not doing
10 clinical work, or you could have a bachelor's level
11 behavioral aide who was going to do that home visit.
12 So it was a variety.

13 Q I guess I am just a little confused about what
14 the non-clinical services would consist of. Maybe you
15 could describe a typical visit to me.

16 A More social skills development, so taking a
17 child out, becoming almost like a mentor, so a
18 behavioral aide without a master's degree, bachelor's
19 or even some high school graduates, taking children out
20 and doing social activities after school, spending time
21 with them on a weekend doing community-based engagement
22 activities.

23 Q What was the frequency of those outings in the
24 child's life?

25 A It varied, everything from a couple of times a

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1 week potentially to maybe once a month, and everything
2 in between.

3 Q What kind of data or program reports were
4 exchanged between the CSB and the program GNETS or the
5 Georgia Psycho Ed program?

6 A I don't know.

7 Q There was nothing that you were aware of?

8 A Not that I am aware of.

9 Q Okay.

10 A I mean, so, you know, there were -- community
11 mental health, community mental health did community
12 mental health, and the schools did the schools. There
13 wasn't a whole lot of connection. They were exceptions
14 to that, but they were pretty separate and distinct
15 from each other.

16 Q In general, it was pretty siloed?

17 A Yes.

18 Q So there wasn't a lot of communication between
19 the community health program and the local public
20 schools of the clients that you served?

21 A Right. There were exceptions to that.

22 Q But in general?

23 A But in general, it was pretty siloed.

24 Q And the same with, for the kids in the Georgia
25 Psycho Ed program?

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1 A Yes.

2 Q What was your impression of the Georgia Psycho
3 Ed program during that period or during the two periods
4 we have been talking about from 1995 to 1999 and
5 through, 2004 through 2006 or '7?

6 A I was focused on our community-based services
7 so I didn't really have an impression. We were focused
8 on doing what we were charged with doing and so that
9 was what we dedicated our energies to. We didn't
10 have -- that was an education, that was a local
11 education thing that -- it was separate.

12 Q What was your mission, then?

13 A To develop community-based services for
14 children to keep them at home and out of PRTFs.

15 Q Understood. Did you learn in 2010 that there
16 was a State auditor's report regarding GNETS?

17 A No.

18 Q You didn't hear about that?

19 A No.

20 Q You didn't read about it in the paper?

21 A No.

22 Q Or the Georgia -- your answers would be the
23 same if I said Georgia Psycho Ed?

24 A Right.

25 Q Did you later learn that there was a 2010

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1 Georgia State auditor's report with regard to the
2 program?

3 A No.

4 Q Did you ever hear reports of inappropriate
5 incidents at the GNETS or Georgia Psycho Ed facilities?

6 A It was not something that I was paying
7 attention to because it wasn't what we were responsible
8 for. And we had our, we had our hands full doing what
9 we were supposed to be doing, what we thought we were
10 supposed to be doing. So I didn't pay a whole lot of
11 attention to that because it was not something that we
12 were, that we had control over.

13 So we didn't really spend, not really, I don't
14 recall ever talking with our team about what's going on
15 in the Psycho Ed Centers.

16 Q So do you have my question in mind,
17 Commissioner?

18 A Say it again, please.

19 Q Did you ever hear reports of inappropriate
20 incidents at the GNETS or Georgia Psycho Ed program?

21 A Not that I recall.

22 Q You never heard that a child hung himself in
23 the program?

24 A Not that I recall.

25 Q You never heard of children confined in small

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1 spaces or closets?

2 A Not that I recall.

3 Q And other than understanding the program, the
4 purpose of the program was to admit students with
5 emotional and behavioral disorders, you didn't have any
6 more defined understanding of the entrance criteria?

7 A Not in the role that I was in, I did not.

8 Q Whether in the role you were in as director of
9 clinical -- children and adolescent mental health
10 services at the CSB or in any other role you held at
11 that time?

12 A So our clinicians would have probably been
13 much more aware of, as some of their members that were,
14 that they were serving and they went, they would
15 understand that. I did not.

16 Q They didn't report it back to you?

17 A No.

18 Q What was the nature of your communications
19 with clinicians about school programs that they
20 visited?

21 A There were times where we would be allowed to
22 have a clinician go into a school, not a Psycho Ed
23 Center, not a GNETS, but a regular school, and work
24 with either groups of children or see their child in
25 the school setting, or we would provide a behavioral

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1 aide in the school, and they would, when I was in
2 Rockdale County, report that back up to me, so from --

3 Q Their impressions of the program?

4 A Not of GNETS or of --

5 Q I see.

6 A -- of the regular ed setting.

7 Q So is it your testimony that your clinicians
8 never visited a Georgia Psycho Ed or GNETS facility
9 and --

10 A No, I cannot answer that. They may have. I
11 don't know.

12 Q You don't know?

13 A No.

14 Q Did the program provide therapeutic services?

15 A It is my understanding that they did.

16 Q Who did the program employ to provide the
17 therapeutic services?

18 A County education team members like a school
19 psychologist who was employed by the local school
20 system.

21 Q Are you speculating, sir, or is it your
22 knowledge that --

23 A No.

24 Q You recall a school psychologist employed by
25 the local school system was rendering therapeutic

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1 services --

2 A Yes.

3 Q -- at the Boston Psycho Ed Center?

4 A No.

5 Q Excuse me, at the Georgia Psycho Ed Center?

6 A At the school system, at the school that I
7 visited in Gwinnett County.

8 Q At the facility that you visited in Gwinnett
9 County --

10 A Yes.

11 Q -- of the Georgia Psycho Ed program?

12 A Yes.

13 Q Do you have any other knowledge of therapeutic
14 services that were provided?

15 A No.

16 Q Who was the school psychologist that you met
17 or that you heard about at the facility?

18 A I don't recall his name, but it was a male.

19 Q Did you meet him?

20 A Yes.

21 Q What did you learn from him?

22 A That they were really busy trying to serve
23 children.

24 Q Anything else?

25 A I don't recall.

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1 Q Were those his words, we are really busy
2 trying to serve kids, as best you can recall?

3 A I remember vaguely just this message of, they
4 are really busy.

5 Q So you don't remember the words that were
6 exchanged --

7 A No.

8 Q -- between you and this individual?

9 A No.

10 Q You just remember a general impression being
11 conveyed that they were very busy?

12 A Yes.

13 Q Now I am going back to, we have been talking
14 about GNETS and I am going back to asking you about
15 terms that you may have heard or used that I have seen.
16 Another one is evidence-based practices. Are you
17 familiar with that term?

18 A I am.

19 Q How do you understand that?

20 A Services that have been put in place for an
21 extended period of time that have had some research and
22 data collection that shows that they have proven to be
23 effective.

24 Q And is part of that proof that evidence can be
25 replicated at more than one site?

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1 A Yes.

2 Q And in terms of Medicaid reimbursement, of
3 therapy or clinical practice, does it need to be an
4 evidence-based practice?

5 MR. BELINFANTE: I object to the form.

6 THE WITNESS: So answer or don't answer?

7 MR. BELINFANTE: You can answer. Sorry.

8 BY MS. COHEN:

9 Q I think you will hear, just to be clear, you
10 will hear an instruction not to answer.

11 A It doesn't have to be, but it is preferred.

12 Q Who prefers it?

13 A That it be evidence-based? I believe CMS,
14 Center for Medicaid and Medicare Services.

15 Q Are you also familiar with the term promising
16 practices?

17 A Yes.

18 Q How do you understand promising practices?

19 A Those that have not been -- that have reached
20 the level of, the degree that an evidence-based
21 practice -- it is kind of like the degree just below
22 that. So it looks very hopeful, but it can't be
23 determined yet because it either hasn't been around
24 long enough or there has not been enough data
25 collection to demonstrate that.

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1 Q So for reimbursement, does CMS require that it
2 either be an evidence-based practice or a promising
3 practice or an exception specifically approved by CMS?

4 A I don't know.

5 Q The next concept I want to ask you about is
6 system of care. And I think you have used that term a
7 couple of times already, but I wanted to take it in
8 order. How do you understand system of care?

9 A A comprehensive wraparound providing a variety
10 of services to children to support them in their
11 communities.

12 Q What do you mean by wraparound?

13 A We always viewed it as, a system of care is,
14 wraparound services was a term in the children's mental
15 health world that was coined 30, 40 years ago to look
16 at the comprehensive health care needs that a child may
17 have, and wrap those services around that child to help
18 them be successful.

19 Q Was it a system, a system of care refer to
20 coordinating the work of different agencies providing
21 services to children and adolescents?

22 A Yes.

23 Q And collaboration among the agencies is
24 required?

25 A Yes.

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1 Q When I say agencies, I am referring to State
2 agencies.

3 A And local.

4 Q And local such as local school districts?

5 A Yes.

6 Q Or quasi-public/private agencies or CSB's
7 public/private agencies?

8 A Yes.

9 Q I didn't ask you, but what is a Community
10 Service Board?

11 A A Community Service Board is an
12 instrumentality of State government that was created in
13 1993 through House Bill 100 to deliver behavioral
14 health and developmental disability services to the
15 citizens in a certain defined community.

16 Q So it is entirely a public board?

17 A It is an instrumentality of State government.
18 So it has an independent board that are appointed by
19 the chairs of the County Commission in each community.

20 Q Understood.

21 During that period when you were at Viewpoint
22 or Rockdale-Gwinnett, were there system of care
23 services provided to individuals with EBD or autism?

24 A So when you say were there system of care
25 services, there were services that the Community

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1 Service Board would offer or the Department of Family
2 and Children Services would offer that played a role in
3 the system of care that was in place in a certain
4 community. That could vary across the State. You had
5 some more robust system of care movements in certain
6 communities.

7 Q You referred to system of care as a movement
8 or as a concept?

9 A Right.

10 Q That came into being, I think you said, around
11 40 years ago?

12 A Wraparound services, system of care probably
13 really took off between '93 -- really, really took hold
14 in the early nineties and was really robust through the
15 mid-nineties, early 2000s and has continued, but
16 probably not -- without as much attention as it had in
17 those earlier days.

18 Q So going back to the early days, were you a
19 proponent of the system of care?

20 A Yes.

21 Q Why?

22 A Because it helped keep children and families
23 together.

24 Q How so?

25 A It provided a wraparound approach to children

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1 that, with intensive services that could keep them in
2 their own homes, in their own beds, with their pillow
3 under their head at night.

4 Q So mechanically, what did that involve? Did
5 that involve communication between the clinicians for
6 one agency with staff from another agency? How does it
7 work?

8 A So you would have primarily Juvenile Justice,
9 Department of Family and Children Services, Community
10 Service Boards, and at times local education coming
11 together to look at the comprehensive needs of a child.

12 Q Was there ever a time when the Georgia Psycho
13 Ed system participated in that system of care?

14 A In Gwinnett County, they did.

15 Q What were the agencies involved in the system
16 of care in which the Georgia Psycho Ed system
17 participated?

18 A Community mental health, meaning
19 Gwinnett-Rockdale-Newton CSB or Viewpoint Health,
20 Department of Family and Children Services, Department
21 of Juvenile Justice, the local Family Connections
22 office, those are the main ones that I can remember.

23 Q Where did that collaboration occur? How did
24 it occur?

25 A Usually during monthly meetings, and it would

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1 rotate. It could be at one of the community mental
2 health centers, it could be at a DFCS office, it could
3 be at the Family Connections office. It would rotate.

4 Q Is system of care something that is mandated
5 in Georgia?

6 MR. BELINFANTE: I object to the form.

7 You can answer.

8 A It is part of a legislative direction. I
9 would say system of care is dependent on which
10 communities you are in. Some communities really
11 embraced it and others did not.

12 BY MS. COHEN:

13 Q My question is a little different. Has the
14 Georgia Legislature enacted a statute with regard to
15 the system of care?

16 A I believe so.

17 MR. BELINFANTE: I object to form.

18 Q Is that 49-5, Sections 220 to 226?

19 A I don't know which sections it would be.

20 Q But you have had occasion to read that
21 statute --

22 A Yes.

23 Q -- in connection with your work for the CSB?

24 A No.

25 Q As Commissioner of DBHDD?

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1 A Yes.

2 Q And also as Commissioner of DCH?

3 A More as Commissioner -- not more, as
4 Commissioner of DBHDD.

5 Q Did the State statute with regard to the
6 system of care require that a system of care plan be
7 developed?

8 A Yes.

9 Q So that's another one of these terms. What is
10 a system of care plan?

11 MR. BELINFANTE: I object to the form.

12 You can answer.

13 A A plan, if you -- so if you go back to our
14 previous discussion about local, the plan that would
15 take State agencies looking at raising up the system, a
16 system of care approach to serving children. So if you
17 had it at the local level with those local partners,
18 this was the State arm of that looking at similar
19 opportunities to develop system of care.

20 Q Understood. Did you participate in the
21 development of the system of care plan at the State
22 level?

23 A I didn't participate in the creation of it. I
24 reviewed it.

25 Q And when was that?

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1 A Sometime during the years of 2012 through
2 2016. I don't recall the exact year.

3 Q There was a requirement in the State statute
4 that the system of care plan be renewed by the State
5 agencies at periodic intervals?

6 A Yes.

7 Q Was it five years?

8 A I don't recall.

9 Q The other term I want to ask you about -- let
10 me make a note here. Is Behavioral Health
11 Collaborative Council, is that a term you are familiar
12 with?

13 A It is.

14 Q What is that? Is that an entity created by
15 Georgia law?

16 A Yes.

17 Q What is its function?

18 A To pull together all State agencies, any State
19 agency that has any potential or any contact with
20 individuals that may have mental health, substance use
21 issues; a way to get a coordinated approach at the
22 highest level of State government to look
23 comprehensively at those needs of those individuals.

24 So if you had a Department of Corrections that
25 had a big population, mental health caseload

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1 population, Juvenile Justice, Department of Family and
2 Children Services, a coordinating council that would
3 hear about some of those challenges in the behavioral
4 health world.

5 Q Did the coordinating council have individual
6 members?

7 A Yes.

8 Q Were those employees of the State agencies
9 that provided the services that were being coordinated?

10 A Yes.

11 Q Were you a member of the Behavioral Health
12 Collaborative Council in Georgia?

13 A The Behavioral Health Coordinating Council.

14 Q Coordinating Council?

15 A Yes.

16 Q Sorry. During what years?

17 A 2012 through 2021.

18 Q So during the entire time that you were
19 Commissioner of DBHDD?

20 A I was chair during my time, chair of the
21 Behavioral Health Coordinating Council during my time
22 as Commissioner of the Department of Behavioral Health
23 and Developmental Disabilities and a member of the
24 council during my time as Commissioner of the
25 Department of Community Health.

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1 Q And as chair, did you have responsibility for
2 overseeing collaboration among the different State
3 agencies that were providing behavioral health
4 services?

5 A Can you say that one more time?

6 Q Yes. As chair, did you have responsibility
7 for overseeing coordination among the different State
8 agencies that were providing behavioral health
9 services?

10 A No. I wouldn't frame it that way.

11 Q What was your role?

12 A To facilitate the meetings to have the
13 discussions among those State agencies.

14 Q With regard to issues of coordinating
15 behavioral health services?

16 A No, I wouldn't frame it that way either. I
17 would say to hear what challenges the different
18 agencies or the Department of Behavioral Health and
19 Developmental Disabilities was faced with and begin the
20 dialogue to facilitate discussion, to get more people
21 to understand, more State agencies to understand and
22 kind of get behind a more robust behavioral health
23 system.

24 So when I started -- you weren't there, but
25 you were -- when I started, we had just signed a

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1 settlement agreement with the United States of
2 America's Department of Justice.

3 Q You are pointing at Aileen Bell Hughes because
4 she was instrumental in creating that agreement,
5 correct?

6 A Yes. And we felt it was really important to
7 get the other agencies to understand the importance of
8 this work that we were trying to accomplish. So we
9 used the Behavioral Health Coordinating Council to
10 really just dive into the behavioral health settlement
11 agreement that we had and get them to understand what
12 we were trying to do as a State.

13 And that was the, the settlement agreement was
14 and still is, was focused on adults. So we spent, 99
15 percent of our time with the Behavioral Health
16 Coordinating Council was on keeping them up to speed,
17 getting buy-in, getting them to understand what we were
18 trying to do to accomplish the settlement agreement
19 with the Department of Justice.

20 Q To implement the settlement agreement, you
21 mean?

22 A Yes.

23 Q What were some of the challenges that you
24 faced?

25 A With? I am sorry, challenges?

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1 Q What were some of the challenges, just give me
2 an example of the challenges that you were -- that were
3 discussed or presented at the Behavioral Health
4 Coordinating Council.

5 A Oh, gosh, the rollout of assertive community
6 treatment teams; the buildout of those services;
7 building communities to serve people; moving from an
8 institutional-based model of care where we served a lot
9 of people with intellectual and developmental
10 disabilities in State institutions and transitioning
11 them into their own homes, into their own communities;
12 getting people to understand that when you can provide
13 care at the local level and in a robust way, that it
14 will help reduce recidivism in the correctional system;
15 that you can serve people with intellectual and
16 developmental disabilities and help them live a life of
17 independence in the community when you provide a
18 significant amount of support for them; and that you
19 can transition them successfully from those State
20 institutions into the community.

21 But some of the challenges were, you have to
22 build communities first before you can adequately do
23 that.

24 Q And some of the community services that you
25 referred to, I think, one of them is the creation of

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1 ACT teams, for example?

2 A Yes, that were part of our agreement with the
3 US Department of Justice.

4 Q Was the creation of the BHCC part of your
5 agreement?

6 A I don't believe so.

7 Q What were the agencies involved?

8 A With the Behavioral Health Coordinating
9 Council?

10 Q Yes.

11 A The Department of Corrections, the Department
12 of Community Health, the Department of Behavioral
13 Health and Developmental Disabilities, Department of
14 Family and Children Services, Department of Education,
15 Department of Labor, I believe the Department of Early
16 Learning and Education, the State ombudsman. That's
17 all I can recall.

18 Q Thank you.

19 Was the BHCC involved with children and
20 adolescent behavioral services as well?

21 A We had a Subcommittee of Child and Adolescents
22 that would report to the larger group.

23 Q And who chaired the subcommittee?

24 A It rotated, so there were various chairs.

25 Q Did it rotate among agencies?

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1 A Yes.

2 Q Was there someone from DBHDD as chairing the
3 subcommittee during your time?

4 A Yes.

5 Q Who was that?

6 A There could have been a couple. Matt Yancy
7 was one of our child and adolescent chiefs.

8 Q At DBHDD?

9 A At DBHDD. I don't recall the others.

10 Q Was Dante McKay one of them?

11 A Yes, but that was after I had gone to the
12 Department of Community Health.

13 Q While you were chair --

14 A While I was on the Behavioral Health
15 Coordinating Council, Dante McKay, I believe, was chair
16 at one point, yes.

17 Q Did you overlap with Mr. McKay at DBHDD?

18 A Yes.

19 Q Were you involved in hiring him?

20 A No.

21 Q But he was hired as the director of the Office
22 of Children Needs and Families?

23 A Yes, I believe so. Can I add to that?

24 Q Of course.

25 A So as Commissioner, you had, for instance, I

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1 think the best way to do this is just describe the
2 organizational structure real quick. So I had a chief
3 of staff, I had a chief operating officer, a general
4 counsel. Those were my direct reports.

5 And I had significant amount of trust and
6 confidence in their ability to hire great people. I
7 had great people. But you had to be cautious about, if
8 you are the Commissioner, your job is to get out across
9 the State and get by into what you are trying to do.

10 And so the day-in and day-out operations was
11 done by the team back at the department. So when you
12 asked about, was I, did I interview Dante, no, but that
13 is not because I didn't have an interest in that. That
14 was because that was probably, sounds terrible, three
15 levels below.

16 Q But you were aware that Dante was being hired
17 to be the director of OCYF?

18 A Yes.

19 Q That was something that would have reached
20 you?

21 A Yes, that we were moving to have, here's our
22 new child and adolescent director.

23 Q Was that a new department at that time?

24 A No.

25 Q Who had been the previous head?

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1 A I believe Monica Parker -- no. Before Dante,
2 it was Matt Yancy.

3 Q And did that office report to Monica Parker
4 Johnson?

5 A I believe so.

6 Q What was her title?

7 A I believe she was the State director of mental
8 health.

9 Q Going back to the Behavioral Health
10 Coordinating Council, what was the Interagency
11 Directors Team?

12 A I knew it as IDT.

13 Q Does IDT stand for Interagency Directors Team?

14 A Yes.

15 Q But you are used to referring to it as IDT?

16 A Yes.

17 Q I didn't mean to confuse you.

18 A No, yes. It was the -- I believe that it was
19 the State agencies who had their points that played the
20 role -- I think it was the agencies' points for the
21 system of care work. They relied on the IDTs, but I
22 also think that they may have gone down to the local
23 level where you had what used to be called the MATCH
24 team, Multi-Agency Team for Children. I believe at the
25 local level there was something equivalent to an IDT

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1 where it was just the transformation from years ago, 25
2 years ago, Multi-Agency Team for Children, may have
3 become -- I may be confusing two things, so that's why
4 I am just trying to think.

5 Q Let me break it down a little bit.

6 A Okay.

7 Q The Interagency Directors Team had a
8 relationship with the BHCC, correct?

9 A Yes, they reported out to the Behavioral
10 Health Coordinating Council.

11 Q Did they also act for them?

12 A I wouldn't categorize it as acting for them.
13 They did work and then reported out on that work.

14 Q To the BHCC?

15 A Yes.

16 Q And the BHCC met once or twice a year?

17 A I think they met four times a year.

18 Q Four times a year. And the IDT met how often?

19 A I don't know.

20 Q And when you refer to points, you are
21 referring to?

22 A When I --

23 Q You used the word "points," and I think I
24 understood it as referring to the point of contact or
25 the individual --

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1 A Yes.

2 Q -- from the agency --

3 A Yes.

4 Q -- who served on the IDT?

5 A Yes.

6 Q So each agency that was involved in the BHCC
7 had a point of contact who served on the IDT; is that
8 correct?

9 A I believe that's correct.

10 Q And DCH was a fully participating member of
11 the IDT when you were there?

12 A I don't know.

13 Q DCH was on the Behavioral Health Coordinating
14 Council?

15 A Yes.

16 Q During the entire time that you were --

17 A Yes.

18 Q -- a State Commissioner?

19 A Yes. We had a representative. I don't recall
20 who, but we had a representative on the IDT.

21 Q And during that entire time?

22 A Yes.

23 Q And did the Department of Education also have
24 a representative during that entire time, the nine
25 years that you were with the State?

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1 A On IDT or on Behavioral Health Coordinating
2 Council?

3 Q Why don't we ask first about the BHCC.

4 A Technically, they had a representative on the
5 BHCC.

6 Q What do you mean by technically?

7 A There was a -- I think the requirement was
8 that Education participate in the Behavioral Health
9 Coordinating Council. So legislatively, the Behavioral
10 Health Coordinating Council still mandated who was a
11 member, and Education was a member.

12 Q And were they an active participant during
13 the, over the nine years that you were there?

14 A Not during the nine years.

15 Q No? At what point were they an active
16 participant?

17 A So during my time at the Department of
18 Behavioral Health and Developmental Disabilities, I
19 don't recall seeing a member from the Department of
20 Education participate in the Behavioral Health
21 Coordinating Council.

22 Q Do you mean, by participation you mean they
23 didn't appear at any of the four annual meetings?

24 A Correct.

25 Q Did they have a representative on the IDT?

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1 A I believe so.

2 Q Who was that?

3 A I don't recall.

4 Q Was that individual active during the time
5 when you were at DBHDD?

6 A I don't recall.

7 Q With regard to the level of activity of DOE
8 and the BHCC, when did that change?

9 A There was more of a presence from the
10 Behavioral Health Council member, meaning the
11 superintendent, when Superintendent Woods came, was
12 elected.

13 Q When was that, to the best of your memory?

14 A I am trying to put my years together. Roughly
15 four years ago.

16 Q Roughly four years ago?

17 A Roughly four years, a little under four years
18 ago.

19 Q So roughly 2018?

20 A Yes.

21 Q Do you remember his designee on the IDT?

22 A I do not.

23 Q The next concept I want to ask you about is
24 school-based mental health services.

25 A Okay.

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1 Q Are you a proponent of school-based mental
2 health services?

3 A Yes.

4 Q What does that term mean?

5 A The opportunity for children to receive their
6 behavioral health services in the school setting, if
7 that is the best setting, most appropriate setting for
8 them to receive them.

9 Q Are you referring to their local public
10 schools?

11 A Yes.

12 Q General education schools?

13 A Yes.

14 Q And my understanding is you have long been a
15 proponent of school-based mental health; is that
16 correct?

17 A Yes.

18 Q Why? What are the advantages?

19 A It is another -- I am a proponent of it. It
20 is another opportunity to offer assistance to children.

21 Q Do you think it is an appropriate opportunity
22 to offer assistance to children?

23 MR. BELINFANTE: I object to the form.

24 You can answer.

25 A Could you repeat the question, please?

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1 BY MS. COHEN:

2 Q Yes. Do you think it is an appropriate
3 opportunity to offer assistance to children?

4 A In some situations, yes.

5 Q Is the goal to enable students and families to
6 participate in their local communities to the maximum
7 extent possible?

8 A Is the goal of school-based services?

9 Q Yes.

10 A Yes. But I think it is important also -- I am
11 sorry, I just want to follow up, if I can. So I think
12 from a history standpoint, I've been in Georgia a long
13 time, local schools, some embraced school-based
14 services, behavioral health services and others would
15 absolutely not, and did not want anything to do with
16 community-based services in their schools.

17 So early nineties, it was like pulling teeth
18 to get the schools to let a behavioral aide come in,
19 for instance. And if a child was having some
20 challenges, they didn't want mental health in the
21 school systems, and so it really was not only local
22 district to local district, it was school by school in
23 those local districts that took a long, long time to be
24 able to allow, sometimes, if we were successful to get
25 school-based services in.

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1 Q So what were the reasons that you are a
2 proponent of school-based mental health services?

3 A I felt like it was just another tool that
4 could be used. There were times where parents, because
5 of working or because of unavailability would struggle
6 to get their children into outpatient behavioral health
7 clinics, and so for those kinds of situations it was an
8 opportunity to offer some support.

9 The challenge was, though, at times, you know,
10 kids didn't necessarily want to get their mental health
11 services while they were in school.

12 Q So my question was, what are the reasons that
13 you are a proponent of school-based mental health
14 services?

15 A It was another avenue to be able to get
16 services to children.

17 Q Get mental health services?

18 A Yes.

19 Q And that was your mission --

20 A Yes.

21 Q -- at DBHDD?

22 A Yes. I was probably more talking about my
23 time at the Community Service Board and Viewpoint
24 Health. At DBHDD, the real driving force for us at
25 DBHDD was to keep kids out of PRTFs, residential

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1 facilities, and really to deliver care -- well, even
2 that gets cloudy.

3 Q Let me ask you a different question because I
4 sense that maybe we have lost the thread.

5 A Okay.

6 Q Okay. When you were Commissioner of DBHDD,
7 were you a proponent of school-based mental health
8 services?

9 A I was in favor of it.

10 Q That's what I mean by proponent.

11 A Yes.

12 Q Yes.

13 MS. COHEN: All right, why don't we take a
14 break, ten minutes or whatever.

15 THE WITNESS: Okay.

16 MS. COHEN: As comfortable.

17 THE WITNESS: Great, thank you.

18 THE VIDEOGRAPHER: Off the record at 10:58
19 a.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are back on the record
22 at 11:18 a.m.

23 MS. COHEN: Actually, I am just going to shut
24 the door.

25 MR. HOLKINS: I got it.

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1 BY MS. COHEN:

2 Q So I want to go back to your time at the CSB
3 and ask you, I think you said you had duties as
4 director of system of care innovations at the
5 Gwinnett-Rockdale-Newton CSB; is that correct?

6 A Yes.

7 Q And --

8 A Some form of that title, yes.

9 Q And it related to the kind of system of care
10 we have been talking about which is encouraging
11 collaboration among the participants in providing
12 services to children who have behavioral health issues?

13 A Yes.

14 Q So I notice that innovations is part of the
15 title. What was your role and what were the advances
16 that were made under your tenure?

17 A So, I think innovations came later. I think
18 innovations is probably a term now. System of care
19 initiatives.

20 Q Initiatives?

21 A Yes.

22 Q So what were the initiatives during your
23 tenure? And this was between 2004 and 2007, or was it
24 also --

25 A No.

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1 Q -- in 1995 to 1999?

2 A Yes. So --

3 Q I am sorry, I just want to make the record
4 clear. So between 1995 and 1999?

5 A Right.

6 Q You were the head of a committee on
7 innovations -- on initiatives?

8 A Right.

9 Q At the CSB?

10 A No. So I was head, from 1995 through 1999 --
11 from 1996 or '97 through 1999, I was the director of
12 child and adolescent services. When I came back in
13 2004, I was over system of care initiatives.

14 Q Okay. And what were the initiatives?

15 A So Georgia in 1992-'93 began to move to
16 serving children in their own communities. They were a
17 little bit behind some of the other states. A lot of
18 children were in residential care.

19 So they, Georgia, before I came here, began
20 the movement of wraparound services. Because I had
21 worked in North Carolina with the Willie M Program
22 where we developed community-based approaches to
23 serving children, I was brought in, interviewed and
24 brought in to begin to really implement a system of
25 care approach, wraparound system of care approach to

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1 serving children.

2 So from '95 to '95 -- '95 to '99, we did that.
3 Then I went to the Department of Juvenile Justice,
4 continued playing a role in that with the Department of
5 Juvenile Justice, because what's that our revenue
6 maximization and enhancement was about, was developing
7 community-based care; and then when I came back in
8 2004, continued that movement of building the system of
9 care approach for serving children.

10 Q What were the initiatives that you pursued
11 during that time?

12 A So wraparound services, which included
13 behavioral aides that could help children with social
14 activities, getting more engaged in their local
15 communities; having a clinician housed, for instance,
16 at the Department of, local Department of Juvenile
17 Justice facility, local DFCS office. So that if a
18 child came in and during intake in one of those
19 agencies and it was thought that they may have a
20 behavioral health challenge, they would have their own
21 clinician in their office that the Community Service
22 Board was supporting them.

23 And there was some school-based support as
24 well, behavioral aides. For those local schools that
25 said we are willing to try this, we had school-based

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1 behavioral aides in a couple of schools.

2 Q So it is hard, as we sit here in 2022, I
3 think, to remember a time when there weren't
4 school-based mental health services.

5 A Yes.

6 Q What was the opposition and what was the work
7 that you went through at the CSB as part of the
8 initiatives of system of care?

9 A I mean, those were, golly, you know, schools
10 in Georgia, which was -- and in North Carolina, but my
11 Georgia time, schools were focused, they wanted to
12 focus on reading, writing and arithmetic. They didn't
13 want to have supports, really, for, for -- in the
14 counties that I was working in, as a general rule, that
15 was foreign to them, to have mental health services be
16 offered in the schools.

17 And so it was literally, I mean, just trying
18 to develop relationships with maybe a progressive
19 school principal to say, give this a chance, and maybe
20 you can reduce some of these behaviors that you are
21 being challenged with.

22 But it was so, I mean, it was just, not just
23 at the local level, it was at this elementary school by
24 elementary school level of trying to get them to
25 understand that when you potentially can offer support.

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1 But it was, I mean, it was -- we had no authority -- so
2 we were doing this on goodwill because we had no
3 authority to say, do this.

4 Q You were a CSB, not a government regulator at
5 that time.

6 A Yes, we were a local instrument, yes, and so
7 it was just trying to get buy-in to do this. But even
8 at the State level, the State departments like
9 Behavioral Health or DCH or DFCS -- you mentioned
10 siloed earlier. The agencies at times work pretty well
11 together, but you have to think about it like this.

12 Well, you don't have to, but if you think
13 about it like this, Department of Family and Children
14 Services, DFCS; Department of Juvenile Justice, DJJ;
15 Department of Early Learning, they are part of the
16 executive branch, they are State agencies that report
17 up to the Governor or to the Governor's office.

18 Department of Education is separate. And so
19 it is not that people didn't want to figure out
20 creative ways, there was no authority for us to -- it
21 was still based on goodwill, let's try this.

22 And I hate to say it, they are separate,
23 Department of Education, it was always viewed, they've
24 got IEPs that then draw down Federal funds and they do
25 their stuff that is separate for the most part than

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1 what DBHDD or DFCS or Juvenile Justice does, and that
2 was always a struggle.

3 Q I didn't -- yes, so there was this --

4 A I am just thinking --

5 Q Right, there was this split in your mind
6 between Department of Education which was providing
7 education services, and the agencies providing
8 therapeutic or health services?

9 A Yes, there was a split there. But also, the
10 view at both the local and State level was during the
11 school hours, schools were responsible for delivering
12 because they had Federal funds that they could access.

13 If an IEP was written and it had something in
14 there, that was the school's responsibility to deliver
15 that. There were exceptions where the schools would
16 reach out and say, hey, can you help us, but those were
17 exceptions. That wasn't the norm.

18 So both at the department level and at the CSB
19 level, we kind of looked at it as our job is before and
20 after school including weekends and evenings, but
21 during the day, that was a school's issue. Not to
22 abdicate that responsibility, but it was just, it is
23 not like -- oh, yeah, we don't have anything to do; it
24 was just that that was the way the structure, that was
25 the structure that was in place.

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1 Q Understood. I just want to ask you one more
2 question about the CSB time when you were on that
3 initiatives role.

4 A Yes.

5 Q Were you one of the people going out and
6 building goodwill in the community or was it solely
7 your clinicians reporting to you?

8 A From '95 to '99, I was one of those people.
9 From 2004 through 2007-'8, I was talking to County
10 Commissioners and doing community presentations but not
11 doing the hands-on. I was a more senior level
12 administrator at that point.

13 Q So between 2004 and 2008 you had the same
14 concerns but your outreach was to more senior
15 individuals at the partners?

16 A In the communities.

17 Q Got it. One other thing I wanted to ask you
18 is in terms of the Behavioral Health Coordinating
19 Council, you were the chair?

20 A Correct, when I was at DBHDD I was the chair.

21 Q Just when you were at DBHDD?

22 A Yes.

23 Q During those years, from 2012 to 2016 when you
24 were at DBHDD, and Department of Education, you
25 testified, was not actively participating, did you

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1 reach out to anyone at the Department of Education to
2 you understand the reasons that they were not
3 participating actively in the BHCC?

4 A When I first started and was just getting into
5 my role as Commissioner, I reached out as Commissioner
6 to the superintendent and say, hey, we've got, this was
7 all new to me also, so got a Behavioral Health
8 Coordinating Council that had been floundering from
9 what I had been told, and so tried to engage the other
10 agency heads to participate.

11 Q And did you have any success with the
12 Department of Education?

13 A No.

14 THE REPORTER: Can we go off the record a
15 second, please?

16 MS. COHEN: Sure.

17 THE VIDEOGRAPHER: Off the record at 11:30
18 a.m.

19 (Discussion ensued off the record.)

20 THE VIDEOGRAPHER: Back on the record at 11:32
21 a.m.

22 BY MS. COHEN:

23 Q You mentioned earlier the concept of authority
24 and Department of Education reporting up through a
25 separate route and the care agencies. Was there a lack

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1 of authority, did you think that was the reason that
2 you were getting the cold shoulder at Ed or GaDOE or
3 was there something more?

4 A During my time at DBHDD as Commissioner, I
5 don't know why the superintendent did not participate
6 in the Behavioral Health Coordinating Council, and I
7 did not have the authority to tell him to attend. He
8 was an elected official --

9 Q Understood.

10 A -- that made his own decisions.

11 Q When you rose from CEO of Viewpoint to
12 Commissioner of DBHDD, do you believe that your work on
13 the CSB initiatives toward a system of care was a
14 factor in your appointment?

15 A No. And I will tell you why.

16 Q Okay.

17 A I had been CEO for three years at Viewpoint
18 Health and really, the system of care movement really
19 was impacted in 2008 when the whole funding streams
20 changed. And so we had people that were focusing on
21 the system of care movement.

22 My emphasis then really shifted to adults,
23 from 2009 through 2012, and the emphasis was on not
24 accessing the State hospital systems. There was this
25 big looming, at the time, settlement agreement with the

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1 United States of America's Department of Justice, and
2 we were doing everything we could to prepare the adult
3 system to try to serve as many of our adults in our
4 three Counties, Gwinnett, Rockdale, Newton Counties.

5 And the emphasis for me personally had really
6 shifted. I was still passionate about children, but
7 the role needed me to be more focused on adults because
8 that's where, that's what the pressure was from, on
9 community service boards from the State, was to address
10 adults.

11 Q And the shift in funding was the creation of
12 the CMOs?

13 A Correct.

14 Q When you became Commissioner of the
15 Department, DBHDD, were you still passionate about
16 systems of care?

17 A Yes.

18 Q And encouraging collaboration among providers?

19 A Yes, and also focusing on the settlement
20 agreement with the United States of America's
21 Department of Justice.

22 Q I am glad that that has some influence. And
23 the concept of school-based mental health services
24 requires that that student be given services and
25 supports to remain in the most integrated general

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1 education setting?

2 A When appropriate and possible, yes.

3 Q Obviously, when appropriate and possible, but
4 that's the focus?

5 A Yes.

6 Q Did you consider at that time GNETS or the
7 Georgia Psycho Ed program to be an integrated setting?

8 A I didn't really give it any thought.

9 Q You didn't form a judgment, you didn't have
10 enough information to form a judgment?

11 A I did not.

12 Q Just going back to, so we can get through
13 these concepts, if a school district sends a student
14 away from her community or local general education
15 school to receive behavioral health services in this
16 segregated setting at another school, would you
17 consider that latter school to be school-based, to be
18 offering school-based mental health?

19 A Say the question one more time, please.

20 Q It wasn't a very good question.

21 A No, I think I know, but just --

22 Q Let me see if I can get at it another way.

23 A Thank you.

24 Q So the GNETS or Georgia Psycho Ed offers a
25 very segregated setting for students, either in a

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1 segregated classroom within a regular gen ed school
2 with no access to the rest of the population or in a
3 standard facility, right?

4 A Yes.

5 Q But it purportedly offers therapeutic
6 services?

7 A Yes.

8 Q Is that consistent with the school-based
9 mental health movement as you are advocating for it?

10 MR. BELINFANTE: I object to the form.

11 You can answer.

12 A So there are shades of gray.

13 BY MS. COHEN:

14 Q Okay. Let's hear the shades.

15 A So priority would be serve the child in their
16 normal regular school. If their behaviors --

17 Q Where possible and appropriate?

18 A Yes, thank you.

19 If that's not possible and appropriate, then I
20 guess a referral or I would say a referral to a psych,
21 I am back in the Psycho Ed days, not GNETS, because
22 that was when I was working, it was Psycho Ed Centers,
23 when I was at the local level.

24 The goal -- the top priority was to keep
25 children out of PRTFs.

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1 Q I understand.

2 A And from being sent out of State. So the big
3 movement was bring children back that have been placed
4 out of State and do your best to not get them into
5 PRFTs. So in some regards, if they can sleep in their
6 own bed at night, the view kind of was if they could
7 sleep in their own bed at night and still stay at home,
8 but if they were getting their services, that was
9 better than a referral to a PRFT where they would be
10 taken away from their families. So that was kind of
11 the big picture view.

12 Q Understood. So if you are talking about
13 better, best would be to have the child in the assigned
14 local or home school?

15 A Yes.

16 Q And receiving services and supports to remain
17 in the local home school?

18 A Yes.

19 Q And the movement, which was a national
20 movement really, not just in Georgia, correct?

21 A Correct.

22 Q Based on research?

23 A Yes.

24 Q Evidence-based practices?

25 A Yes.

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1 Q Was to enable students to remain in their
2 local home-based school with appropriate services and
3 supports?

4 A Yes.

5 Q And not to be sent to restrictive environments
6 such as GNETS?

7 A Yes.

8 MR. BELINFANTE: I object to form.

9 BY MS. COHEN:

10 Q The other thing I have seen a lot of, the
11 other concept is continuum of care. And I've even seen
12 a brochure --

13 MS. COHEN: Do we have that? Let's mark that.
14 Is that Exhibit 1 -- 348. Thank you.

15 (Plaintiff's Exhibit 348 was marked for
16 identification.)

17 A Is this where I use Zoom?

18 Q Patrick will put it up.

19 A Okay. I don't do anything?

20 Q He will put it up. And I think he will give
21 you control so you can really look at it.

22 MR. HOLKINS: Mr. Berry, do you have control
23 of the document?

24 THE WITNESS: Yes.

25 BY MS. COHEN:

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1 Q Do you recognize this?

2 A Yes, I recognize it.

3 Q What is it?

4 A It is an agenda from a system of care
5 conference.

6 Q Was it a system of care conference at which
7 you spoke?

8 A Yes.

9 Q Is that funny-looking guy on Page 7, is that
10 in fact you?

11 A Yes.

12 Q And the biography there on Page 6, I guess of
13 the brochure, Page 7 of the pdf, and it talks about
14 your reputation with regard to working with consumers,
15 family members, advocates and service providers to
16 achieve the Department's mission.

17 A Yes.

18 Q And to support individuals in their home
19 schools?

20 A Yes.

21 Q And this was a brochure for something called
22 the System of Care Academy?

23 A Yes.

24 Q Was that a DBHDD-sponsored event?

25 A Yes.

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1 Q And what is the System of Care Academy?

2 A That was a conference that we sponsored with,
3 as a result of a system of care grant that was -- I am
4 trying to remember when it ended, that had ended
5 several years before this, but the System of Care
6 Academies were something that the State embraced to
7 continue to try to get the message out, of the value of
8 wraparound and community-based care for children and
9 families. And this was the Department's way of being
10 able to still demonstrate its support for that
11 movement.

12 Q And so you were speaking on behalf of the
13 Department --

14 A Yes.

15 Q -- as the Commissioner about the virtues of
16 the system of care?

17 A I don't recall what I was speaking on. More
18 than likely I was -- I don't recall what I was speaking
19 on because it could have been that I did just that, but
20 it also could have been, I am here as the Commissioner
21 to welcome you and say, introduce maybe even the
22 keynote who was from SAMHSA, the Substance Abuse and
23 Mental Health Services Administration.

24 Q Who was that?

25 A Gary Blau. So I may have done an introductory

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1 welcome to the conference.

2 Q And SAMHSA which is the Substance Abuse and
3 Mental Health Services Administration, a Federal
4 agency, has been advocating for some time for system of
5 care?

6 A Yes.

7 Q And in fact it is a requirement of many of the
8 SAMHSA grants that the State describe the system of
9 care that it will be implementing?

10 A Yes.

11 Q The behavioral health system?

12 A Yes.

13 Q And is the brochure accurate where it says at
14 Page 6 near that photograph, quote, "Berry places a
15 high value on working as a team with consumers, family
16 members, advocates, service providers, elected
17 officials, State and Federal agencies and all DBHDD
18 employees to achieve the Department's mission"?

19 A Yes.

20 Q And then there is a colon?

21 A No, it is not on my -- I'm sorry for
22 interrupting. It is gone from my screen.

23 Q Technology is wonderful when it works.

24 MR. HOLKINS: Can we go off the record? He is
25 no longer on Zoom. At least the window is not

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1 open.

2 THE VIDEOGRAPHER: Off the record at 11:48

3 a.m.

4 (Discussion ensued off the record.)

5 (Luncheon recess.)

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AFTERNOON RECESS

12:42 p.m.

THE VIDEOGRAPHER: We are back on the record
at 12:42 p.m.

BY MS. COHEN:

Q Commissioner, how are you presently -- you are
presently employed by Ernst & Young?

A Yes.

Q Is that the name of the outfit?

A Yes.

Q What is your job title at Ernst & Young?

A Managing director.

Q What is your area of responsibility?

A Medicaid transformation at a national level,
so helping states do transformation to prepare their
Medicaid divisions and departments for the upcoming
health care environment.

Q For care management --

A No, just in general.

Q I think you told me previously that you are
working in 49 states?

A I can work in 49 states.

Q You can work in 49 states?

A We are very selective right now. I can work
in all states, but I am not working in Georgia.

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1 Q So how long are you barred from working in
2 Georgia?

3 A I was not barred. That was at my request.

4 Q At your request?

5 A Yes.

6 Q So you can go back to working in Georgia at
7 any time?

8 A If I chose to.

9 Q Yes, okay.

10 Now, the brochure that we were looking at when
11 we went out refers to or describes the Department,
12 DBHDD's mission as "leading an accountable and
13 effective continuum of care to support Georgians with
14 behavioral challenges and intellectual and
15 developmental disabilities in a dynamic health care
16 environment."

17 Would you agree that describes the mission of
18 DBHDD during the time you were there?

19 A Yes.

20 Q The brochure refers to a continuum of care.
21 Is that a term of art in the context of a system of
22 care?

23 A It can be used as part of a system of care,
24 but it can be used just in general of behavioral health
25 services. Even if you are not referring to the system

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1 of care, continuum of care can be used across all
2 disciplines, children, adults, individuals with
3 intellectual and developmental disabilities.

4 Q What does it refer to?

5 A A continuum of care would be access to various
6 resources that are available at any given time, and in
7 my lens, the ebbs and flows of when a person may need
8 access to them. So, best example is, let's say you
9 come in for an assessment and you are in an acute
10 critical crisis. You would access crisis services.

11 The continuum of care is what you ultimately
12 may have access to throughout your course of treatment.
13 It may be at times high-intensity, it may at times be
14 lower-intensity. All of those make up the continuum of
15 care.

16 Q And an individual would move in and out of
17 those settings as appropriate?

18 A Right.

19 Q What were the settings offered on the
20 continuum of care provided by DBHDD when you were
21 Commissioner in the years 2012 to 2016?

22 A So very distinct population, so --

23 Q I am referring to individuals, to children and
24 adolescents --

25 A Oh, children. So --

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1 Q -- DBB. I am sorry.

2 A So the Department did not deliver direct care.
3 The Department contracted with community service boards
4 and other providers to deliver the direct care who
5 offered the continuum of care.

6 So, in the Department of Behavioral Health and
7 Developmental Disabilities, was only very technically
8 speaking responsible for uninsured children that didn't
9 have any other coverage.

10 Q I am going to stop you right there.

11 A Okay.

12 Q So the Department was a link required to
13 provide insurance for uninsured children who didn't
14 have access to services, correct?

15 MR. BELINFANTE: I object to the form.

16 You can answer.

17 A They didn't provide insurance, they had a, the
18 Department had a limited amount of funding that went to
19 support uninsured children, because if you think
20 about --

21 BY MS. COHEN:

22 Q That's all right.

23 A Okay.

24 Q I am mindful of our time.

25 A Okay.

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1 Q You testified previously about the Georgia
2 Psycho Ed and you became aware, I think at some point
3 that, it was the GNETS system?

4 A Right.

5 Q And that was during the time you were
6 Commissioner of DBHDD. Was that on the continuum of
7 care that was offered by DBHDD?

8 A I am sorry, was what offered?

9 Q The GNETS program.

10 A No.

11 Q Was one of the initiatives that you
12 implemented when you were the Commissioner of DBHDD the
13 APEX program?

14 A It was one of the initiatives that the
15 Department started, yes, I believe so.

16 Q The Department created it during your tenure?

17 A I believe so, yes.

18 Q Are you familiar with it?

19 A Yes.

20 Q Did you spend time on it as Commissioner?

21 A I am familiar with it. I didn't spend time on
22 it. I know what it is and I knew what it was, but I
23 didn't spend --

24 Q What is it?

25 A School-based behavioral health services for

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1 children that had serious emotional disturbances --
2 well, school-based behavioral health services.

3 Q Was it a collaboration among DBHDD, DCH, the
4 CSBs and the local school districts?

5 A I would say it was a collaborative between
6 DBHDD, the CSBs and some local school districts. DCH
7 didn't really play a role in that.

8 Q DCH did not.

9 Was the APEX program part of Georgia's system
10 of care for children and adolescents with EBD?

11 A I don't know.

12 Q You don't know?

13 A I don't definitively know.

14 Q How is that possible since you were the Chair
15 of the Behavioral Health Coordinating Commission,
16 Coordinating Council and you were part of the DBHDD?
17 What is the ambiguity that you are focused on?

18 MR. BELINFANTE: I object to form.

19 A So I don't know if it was formally -- ask your
20 question again, please.

21 BY MS. COHEN:

22 Q Yes. Is APEX part of, the APEX program part
23 of Georgia's system of care for children and
24 adolescents with EBD?

25 A So the reason I don't know is APEX came about

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1 right when I was leaving.

2 Q I see.

3 A And so I don't know whether it was ever
4 formally put into the system of care, a formal
5 document.

6 Q What kind of formal documents would
7 evidence --

8 A The report, the every couple of year
9 legislative required report.

10 Q I see. From the point of view of DBHDD, was
11 it the intention of the Department in creating the
12 program that it would be part of the system of care?

13 A I don't know.

14 Q Do you understand my question?

15 A Yes, but I wasn't involved in that level of
16 discussion of whether it would be involved, whether it
17 would be incorporated into the system of care. It was
18 an initiative that had just gotten started, but I don't
19 know if it was -- I don't recall if it was a formal
20 part of the system of care initiative.

21 Q So the State system of care was just getting
22 off the ground in 2015 and 2016?

23 A Right, yes, I think that's a fair statement,
24 at that level.

25 Q At that level, because you talked about the

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1 local level previously --

2 A Right.

3 Q -- and the initiative that you carried out at
4 Viewpoint.

5 A Right.

6 Q What is the relationship between the CSBs and
7 APEX?

8 A The CSBs were one of the providers of the APEX
9 program that I am aware of.

10 Q Were there other providers other than the
11 CSBs?

12 A I don't know.

13 Q What was the relationship of the CMOs to APEX?

14 A I don't believe -- I don't know. I don't
15 think there was a relationship that I am aware of.

16 Q So coming back to GNETS, you knew during your
17 period as Commissioner that there was a program for
18 children and adolescents with emotional and behavioral
19 disorders, correct?

20 A Yes.

21 Q And you knew that they were maintained in
22 segregated settings?

23 A Yes.

24 Q And to your knowledge, did GNETS provide
25 behavioral health care services to children and

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1 adolescents with EBD during your time as Commissioner?

2 A Yes.

3 Q What behavioral health services were they?

4 A Group therapy, counseling, psychological
5 evaluations.

6 Q Were they evidence-based practices?

7 A I don't know.

8 Q How do you know that those are the services
9 that were offered by GNETS?

10 A I am basing that on my visit to the GNETS
11 program that day back in the mid-nineties.

12 Q Is that the extent of your knowledge?

13 A Yes.

14 Q Who on your staff at DBHDD was principally
15 responsible for coordinating with the Department of
16 Education when you were Commissioner?

17 A Probably the child and adolescent, child/young
18 adult director, so that would be Dante and Matt Yancy
19 that I am aware of.

20 Q Dante McKay or Matt Hanson and their staff?

21 A Matt, not Matt Hanson, Matt Yancy.

22 Q And did they report through the channels to
23 you that they were doing such coordination with GNETS?

24 A Not that I recall.

25 Q Was there any discussion of GNETS at the IDT

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1 during the period when you were Commissioner of DBHDD?

2 A Not that I recall. But I didn't participate
3 in the IDT meetings.

4 Q You were the chairman of the Behavioral Health
5 Council -- Coordinating Council?

6 A Right.

7 Q To which the IDT reported up.

8 A Right.

9 Q And you didn't hear of it?

10 A Not of coordination with GNETS or the Psycho
11 Ed Centers that I recall.

12 Q And the IDT was responsible for implementing
13 the system of care?

14 A Not implementing, they were responsible for
15 the creation. It was kind of a framework that was put
16 in place. They didn't have authority to implement.

17 Q Let's look at the system of care State plan.

18 MS. COHEN: And if there is no objection, I'm
19 just going to mark a color copy as Exhibit 349. It
20 was also produced in black and white as GA04245177
21 to 243, but if there is no objection, I will just
22 use it, and I gather there is none.

23 MR. BELINFANTE: No objection.

24 MS. COHEN: I will just use a color copy
25 because I think it is a little easier to see.

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1 (Plaintiff's Exhibit 349 was marked for
2 identification.)

3 BY MS. COHEN:

4 Q Do you see it, Commissioner?

5 A Not yet. It is coming up now. Okay.

6 MR. HOLKINS: You have control of the
7 document, Commissioner.

8 A Great.

9 Q Do you want to take a minute to page through
10 it? Just tell us when you are ready.

11 (Pause.)

12 A Okay.

13 Q This was created, I am going to represent to
14 you, in 2017, but have you seen it before?

15 A Yes.

16 Q Were you part of the planning for this?

17 A No.

18 Q When did you see it?

19 A I don't recall.

20 Q Did you see it at or about the time it was
21 issued?

22 A I don't recall.

23 Q Do you know who the principal authors were of
24 this?

25 A No, I do not.

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1 Q Did you see it before it was in draft?

2 A I don't recall.

3 Q Did you see it while you were the Commissioner
4 at DCH?

5 A Yes.

6 Q Who sent it to you?

7 A I don't recall.

8 Q Let's look at Page 11. There is Chronology of
9 Key Events. Do you have that in front of you?

10 A Not yet. I am almost there. Okay.

11 Q Looking at 1992, do you see that?

12 MR. HOLKINS: Commissioner, we are actually
13 taking control of the document back so we can
14 direct you to it.

15 THE WITNESS: I am at the history of SOC. I
16 see 1982, yes, 1992. I see 1992.

17 BY MS. COHEN:

18 Q Do you see figure 2 and the reference to 1992?

19 A Yes.

20 Q And it says, "SAMHSA required all states
21 receiving mental health block grant funds to develop a
22 separate children's plan addressing an organized,
23 comprehensive, community-based SOC."

24 A Yes.

25 Q Do you see that? And do you recall that in

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1 1992 SAMHSA required all states receiving mental health
2 block grants to implement such a plan for children?

3 A I was not familiar with that back in 1992.

4 Q But you became aware subsequently?

5 A Yes.

6 Q You understand SOC there to refer to --

7 A Yes.

8 Q -- the system of care?

9 A Yes.

10 Q And during your tenure in the Department, did
11 the Department hold a mental health block grant?

12 A Yes.

13 Q Were you part of the application process for
14 that?

15 A Probably as Commissioner I was.

16 Q In fact, as Commissioner, you were the
17 grantee, right?

18 A I don't know. I don't know.

19 Q You don't remember?

20 A Right.

21 Q But in any case, as part of the mental health
22 block grant, the State of Georgia and the Department of
23 Behavioral Health and Developmental Disabilities was
24 required to describe its system of care plan for
25 children?

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1 A Yes.

2 Q And GNETS is not mentioned in the system of
3 care plan, right?

4 A I don't recall.

5 Q You don't recall. There is also reference in
6 the chronology, if we look at the year 2000, it says,
7 "A SAMHSA grant was awarded to Rockdale and Gwinnett
8 Counties to create system of care collaboratives called
9 Peach State Wraparound Initiative, eventually renamed
10 Kidsnet." Is that what you were involved in?

11 A Yes.

12 Q And then in 2004, there was a further grant,
13 the SAMHSA Child and Adolescent State Infrastructure
14 Grant, the CADIG, C-A-D-I-G?

15 A Yes.

16 Q And were you aware of that?

17 A Yes.

18 Q What were the elements of the statewide
19 collaborative?

20 A To put on the System of Care Academy and to in
21 essence use the work that had been done through the
22 initial Kidsnet grant to be kind of an incubator for
23 developing a system of care approach throughout the
24 State.

25 Q Who had been part of the Kidsnet development?

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1 Was there one CSB that led the way?

2 A For the first Kidsnet one, yes, the
3 Gwinnett-Rockdale, GRN Community Service Board, yes.

4 Q Who were the collaborators in that statewide
5 collaborative by category, not by specific name of
6 individual entity?

7 A I am sorry, say that say question again.

8 Q Kidsnet was a statewide system of care
9 collaborative, right?

10 A It started as a Gwinnett-Rockdale, somewhat
11 Newton and then ultimately was embraced by the State to
12 be the statewide system of care framework.

13 Q And that framework included collaborators?

14 A Yes.

15 Q And who were the collaborators by category?

16 A At the statewide level?

17 Q At the Kidsnet level.

18 A DBHDD -- well, at the time it was DHR and it
19 was --

20 Q That was the predecessor agency to DBHDD?

21 A Right, and it was MH, Office of Mental Health.
22 Then it was Department of Juvenile Justice. See, I
23 wasn't involved with that in 2000 -- I am trying to
24 think.

25 Let me just think about my timeline. Yes,

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1 Juvenile Justice, you had Mental Health, Family
2 Connection, and you had DFCS, Department of Family and
3 Children Services.

4 Q Did the Department of Education play any role?

5 A I don't recall them playing a role.

6 Q Do you recall any role for the GNETS program
7 in that statewide collaboration?

8 A I don't, but I am not sure that I was a member
9 of the statewide collaboration in 2005.

10 Q Let me ask you something else. In 2008, DBHDD
11 received approval for a 1915(c) waiver for, to provide
12 mental health services. Were you involved in that in
13 any way? I know you were not yet at the Department,
14 but did you have any involvement in stimulating or
15 advocating for the waiver?

16 A Yes.

17 Q What was your involvement? This was when you
18 were at Viewpoint.

19 A We were helping the State with their framework
20 of what that would look like because of our role with
21 Kidsnet.

22 Q And what were your contributions to the
23 framework?

24 A The System of Care Academies that were ongoing
25 from the early days of Kidsnet when GRN-Viewpoint

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1 Health was administering that, and subject matter
2 expertise of leadership on system of care, of the
3 system of care model.

4 Q Did you participate in writing a draft or
5 reviewing a draft of the CBAY waiver, which is
6 Community-Based Alternatives for Youth.

7 A Community-Based Alternatives for Youth. I
8 probably reviewed it, but I was not an author of it.
9 But I probably reviewed it.

10 Q Ultimately, DBHDD received the waiver from
11 CMMS, correct?

12 A Believe I so.

13 Q And was that program successful?

14 A I don't know.

15 Q In your view as Commissioner, was it a
16 successful program?

17 A I'd like to say yes. Yes.

18 Q What were the elements of its success?

19 A Reduction of out-of-home placements; improved
20 school performances; keeping children out of the
21 juvenile justice system; helping children who were
22 ready to find part-time jobs in employment; reduced
23 number of violent or aggressive outbursts in home and
24 in schools and in their community.

25 Q So according to -- those were metrics that are

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1 part of the program that DBHDD watched to measure the
2 success of the program?

3 A I believe so, yes.

4 Q And did community care providers like that
5 program? Was that the feedback from community care
6 providers?

7 A I don't know.

8 Q You weren't aware that the community care
9 providers reacted positively to the CBAY waiver
10 program?

11 A Yes.

12 Q Yes, what?

13 A Yes, they, the people that I spoke to, which
14 was a very limited number of people, primarily
15 community service boards, were pleased with the, what
16 CBAY was offering.

17 Q What did they like about it?

18 A That it was an additional tool that they had
19 to keep children and families together in their own
20 homes, in their own communities.

21 Q By providing mental health services in the
22 community?

23 A Yes.

24 Q And by providing mental health services in
25 school?

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1 A In the limited -- I don't know about the
2 school aspect. I just know that they liked it as a
3 whole. I don't recall being told that they liked it in
4 the schools.

5 Q Did that -- and this is what you heard when
6 you were the Commissioner of DBHDD as feedback from the
7 CSBs?

8 A So I was -- I started in 2012. CBAY was
9 really instrumental before I started as Commissioner.
10 But after I was Commissioner, there were still aspects
11 of CBAY that were going on and heard positive things
12 about it.

13 Q So as Commissioner, you heard positive things
14 about it?

15 A Yes.

16 Q And as the CEO of Viewpoint, you also heard
17 positive things about it?

18 A Yes.

19 Q As CEO of Viewpoint, you had a positive
20 attitude toward this waiver?

21 A Yes.

22 Q Did the waiver sunset at a certain point?

23 A I believe so.

24 Q Why did the program end or sunset?

25 A It was a Federal initiative where the Federal

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1 funds go away. And it was up to the State to continue
2 those, and I don't know if there was funding to
3 continue it as it was originally designed.

4 Q Did the State make an effort to continue it?

5 A Aspects of it, I believe so.

6 Q But not the waiver program as a whole?

7 A I don't know.

8 Q Under the name CBAY?

9 A I believe we were able to, even when I was
10 Commissioner, keep pieces of it, but I don't recall
11 what those pieces were.

12 Q But the program as a whole sunsetted?

13 A I believe that's right.

14 Q I want to ask you about DBHDD. I think you
15 were the second Commissioner?

16 A Yes.

17 Q That must have been quite an honor.

18 A Of a lifetime.

19 Q And the Legislature created the agency in what
20 year?

21 A I believe it was either 2009 or 2010.

22 Q What was the impetus for the creation of
23 DBHDD?

24 A I think to get more attention to, to get more
25 attention to mental health, substance use and

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1 developmental disabilities and break it up from being a
2 part of a much larger agency.

3 Q In addition to the more kind of specific or
4 intentional attention that you are describing, was the
5 creation of DBHDD also important to the states
6 competing for and receiving SAMHSA grants?

7 A I don't know.

8 Q Would you recall that under the SAMHSA grants,
9 there was a concept of responsible state agency?

10 A I don't know. I am familiar with the single
11 state authority.

12 Q Single state authority?

13 A SSA.

14 Q Thank you.

15 A And that DBHDD was the single state authority
16 for the SAMHSA dollars that came from Substance Abuse
17 Mental Health Services Administration.

18 Q So prior to 2009, there was not a single state
19 authority?

20 A I think that it was MHDDAD, Mental Health
21 Developmental Disabilities substance use that fell
22 under the Department of Human Resources, DHR.

23 Q So it was two agencies prior to that time?

24 A It was a division under a department.

25 Q And it became a separate agency?

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1 A And it became its own department.

2 Q Thank you. And DBHDD received many grants
3 from SAMHSA in the years 2009 through 2016, right?

4 A Yes.

5 Q The mental health block grant?

6 A Yes.

7 Q The, is it CHIPRA grant?

8 A Yes.

9 Q And --

10 A I don't know if DBHDD got CHIPRA or DCH got
11 CHIPRA.

12 Q But in any case --

13 A The State got CHIPRA.

14 Q The State got CHIPRA?

15 A But I am not sure which one received those
16 funds.

17 Q There were also grants for SAMHSA's Healthy
18 Transitions program?

19 A I don't recall.

20 Q Let's move on. In 2009, were you aware that
21 my office, the Department of Justice, sued Georgia for
22 lack of community-based services?

23 MR. BELINFANTE: I object to the form.

24 A Say the question again, please.

25 BY MS. COHEN:

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1 Q Let me back up. Exhibit 349 is the system of
2 care plan, right, that you identified?

3 A Yes. It is not up now.

4 Q Sorry, it is hard with the electronic
5 exhibits. I apologize.

6 A No, that's okay.

7 Q It is even harder to bring paper copies.
8 2009, right there?

9 A Yes, I am familiar with that.

10 Q And CHIPRA refers to the Children's Health
11 Insurance Program Reauthorization Act of 2009?

12 A Yes.

13 Q And the Department of Justice sued Georgia --

14 A Yes.

15 Q -- in that year citing a lack of
16 community-based services?

17 A Yes, for adults, is my understanding.

18 Q And then in 2010, according to this document,
19 the interagency directors team was founded from Kidsnet
20 Georgia Statewide SOC Collaborative? Is that
21 consistent with your memory?

22 A Yes.

23 Q And the Governor's Office of Children and
24 Families was created?

25 A Yes.

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1 Q Then in 2011 on your watch, the Department
2 created, or this was prior to your joining the
3 Department, created an updated five-year plan for the
4 system of care?

5 A I can't speak to the 2011 part.

6 Q When you came into place, the 2010 system of
7 care plan was in effect, correct?

8 A Yes.

9 Q And that was something that you were
10 interested in the Department's pursuing faithfully?

11 A Yes.

12 Q Also in 2011 the Center of Excellence was
13 formed?

14 A Yes.

15 Q What is that?

16 A I believe the Center of Excellence was a
17 partnership with Georgia State University to kind of be
18 the, the repository and the kind of almost like project
19 management of data and everything else related to
20 system of care for Georgia.

21 Q Did you meet with representatives of the COE?

22 A Yes, when they first were establishing the
23 partnership, I believe so.

24 Q Who did you meet with?

25 A I don't recall.

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1 Q Is Ann DiGirolamo one of the people you met
2 with?

3 A Say the name again, please.

4 Q Ann, and then the last name is hard but I will
5 spell it for you, DiGirolamo, D-I-G-I-R --

6 A I don't recall meeting with her.

7 Q Do you recall anyone you met with from the
8 COE?

9 A I think I remember meeting with Karen Minyard
10 and Angie, but I don't recall Angie's last name.

11 Q Was it Angie Snyder?

12 A I don't recall the last name.

13 Q And then in 2012 you became the Commissioner
14 of DBHDD and you pursued the system of care framework?

15 A Yes.

16 Q Do we need to break?

17 A No, I just heard that, somebody say, "Here's
18 what I found."

19 Q You were pursuing it in two capacities, the
20 system of care both as the chair at the Behavioral Care
21 Coordinating Council; is that right?

22 A So this is an interesting time, and I think it
23 deserves a little bit of explanation. So when I came
24 in --

25 Q Even with our schedule?

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1 A Yes, I am sorry.

2 When I came in, the priority was the
3 settlement agreement with the United States Department
4 of Justice, which was adult-focused.

5 So I was a huge supporter and still am of the
6 system of care approach, but had to let our team focus
7 on that because the priority for the administration was
8 the settlement agreement that we had just signed maybe
9 ten months before I started, a little over a year
10 before I started.

11 Q Let me interrupt you here, Commissioner,
12 because my question didn't relate to what was the
13 single priority of the Department. My question related
14 to whether the system of care was something that the
15 Department focused on when you were Commissioner.

16 A Okay, and sorry, I misunderstood. I thought
17 you asked was that what I was focusing on.

18 Q Yes.

19 A I believe the Department was focused on it.

20 Q And as part of the Behavioral Health
21 Coordinating Council, were memoranda of understanding
22 put in place to implement the system of care?

23 A I believe so, yes.

24 Q Are those sometimes referred to as MOUs?

25 A Yes.

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1 Q What were the elements of the MOUs?

2 A Broad scale, that the agencies would play
3 nicely together and work together for strategic
4 planning and how to help children and families through
5 a system of care model.

6 Q And broad scale in 2015, which were the
7 participating agencies that signed MOUs?

8 A Gosh, Department of Community Health,
9 Department of Family and Children Services, Department
10 of Early Learning and Childhood Education, Department
11 of Juvenile Justice, Department of Education, and I
12 don't recall who else.

13 Q Do you recall that DBHDD was a signatory to
14 the MOUs?

15 A Yes, I am sorry, the Department of Behavioral
16 Health and Developmental Disabilities.

17 Q What was the significance of the signing of
18 the MOUs with regard to the system of care?

19 A To demonstrate to the teams that the
20 leadership of the agency supported their work and to
21 codify that work.

22 Q And the IDT actually at that time also drafted
23 operational guidelines; is that correct?

24 A I don't recall.

25 Q Also in 2015, DBHDD initiated a school-based

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1 mental health pilot, in their chronology, 2015. Move
2 up the screen.

3 THE VIDEOGRAPHER: Mr. Berry, where is your
4 microphone? I heard you loud and clear, though.

5 THE WITNESS: That doesn't mean we get to
6 start over.

7 BY MS. COHEN:

8 Q If it happens again.

9 A I see it, okay, yes.

10 Q Who from your agency led the pilot?

11 A That was probably Dante McKay.

12 Q What were the components of the pilot from
13 DBHDD's point of view?

14 A I don't know. I don't know. I don't recall.

15 Q What work needed to be done by DBHDD as a
16 State agency to facilitate a provision of mental health
17 services in the schools?

18 A I believe that that may have been part of the
19 APEX project, I think, and they needed to provide
20 funding to the CSBs. And I think there may have been
21 some other providers to staff some of that work.

22 Q So what you are saying is that funding came
23 from DBHDD to the CSBs to provide services in staffing
24 school-based mental health programs?

25 A Yes.

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1 Q Why weren't those funds provided by the usual
2 Medicaid funding?

3 A I don't know. I am not familiar that Medicaid
4 funding would provide that.

5 Q Usually CSBs get reimbursement ultimately from
6 Medicaid funds for services provided?

7 A Correct.

8 Q And as part of the pilot and subsequent APEX
9 program, additional funding was provided so that the
10 CSBs could have professionals in the schools for
11 services that were not otherwise reimbursable?

12 A So historically --

13 Q Is that correct?

14 A I don't know. But historically, Medicaid, it
15 is real tricky to deliver Medicaid services in the
16 school system. So --

17 Q Let me just stop you there. Is the reason it
18 was tricky, because there needed to be a developed
19 relationship with the particular school in order to
20 provide services?

21 A No.

22 Q What was the reason?

23 A CMS rules and regulations of getting, of
24 delivering Medicaid-reimbursable services in the school
25 system, that was the biggest challenge.

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1 Q What was the obstacle? Did CMS only reimburse
2 clinic-based services?

3 A I don't know.

4 Q What was the obstacle?

5 A If I remember correctly, the ability to
6 deliver Medicaid-reimbursable services in the school
7 system may not have been allowed by CMS.

8 Q How did DBHDD deal with that issue?

9 A Before 2008 they used Grant in Aid funds to
10 provide some limited resources in the schools using
11 Grant in Aid dollars. And after that, they kind of
12 stopped until APEX came along.

13 Q How was the APEX program able to deal with
14 that obstacle?

15 A They didn't bill for services. They didn't
16 bill Medicaid.

17 Q When you say "they," are you referring to the
18 CSBs?

19 A Yes.

20 Q Do you recall that funds came from the
21 Department, DBHDD, to the CSBs to compensate for time
22 spent establishing relationships with the schools?

23 A Yes.

24 Q What kind of services were those?

25 A Group counseling, maybe some limited

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1 individual counseling, and some social services --
2 social skills development.

3 Q But there was money paid by DBHDD for services
4 that were not reimbursable through the Medicaid
5 program?

6 A Correct.

7 Q And what were those services?

8 A Those, what I just named, individual therapy,
9 group therapy and some social skills building.

10 Q And was there also money paid to, as part of
11 that for the CSB to develop a relationship with a
12 particular school?

13 A The CSBs would work with the local communities
14 to identify where there was a high prevalence of
15 children in a school that had a serious emotional
16 disturbance and try to target those resources there.

17 Q Did they receive money from DBHDD to support
18 that effort?

19 A I believe that's what the APEX money was for.

20 Q And where did the APEX money come from?

21 A I believe it was an appropriation from the
22 General Assembly.

23 Q From the State of Georgia?

24 A From the State of Georgia.

25 Q I want to shift focus a little bit and ask you

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1 about the DOJ letter of findings that was sent in 2015.

2 Let's put that up.

3 Actually, before we do that, I want to do one
4 other thing. I want to ask you about the statute, the
5 DBHDD statute.

6 A Okay.

7 Q And while Patrick is putting that up, let me
8 just ask you: Were you part of the effort to create
9 the agency?

10 A No.

11 Q From your role in Viewpoint, did you support
12 the creation of the agency?

13 A I had nothing to do with it.

14 Q Nothing?

15 A Nothing.

16 Q Did you see the legislation?

17 A Yes.

18 Q Before it was enacted?

19 A No.

20 Q But you are familiar with the DBHDD enabling
21 statute?

22 A I am familiar with it.

23 Q In fact, you followed it and enforced it
24 during your years as Commissioner?

25 A I tried, yes.

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1 (Plaintiff's Exhibit 350 was marked for
2 identification.)

3 BY MS. COHEN:

4 Q So I am going to put up now as Exhibit 350 the
5 statute. Is this the DBHDD enabling legislation?

6 A I believe so, yes.

7 Q What we have put up is Georgia Statute Section
8 37-120, Powers and Duties of the Department and the
9 Divisions. Probably haven't looked at it in a while?

10 A Correct.

11 Q But you did look at it while you were
12 Commissioner?

13 A Briefly.

14 Q You were responsible for it?

15 A Correct.

16 Q For the implementation of it when you were
17 Commissioner?

18 A Yes.

19 Q And in Section 1 of the statute it says, it is
20 describing the powers and duties of the Department,
21 DBHDD and its divisions, and in Section 1 it says,
22 "Establish, administer and supervise the State programs
23 for mental health as well as developmental disabilities
24 and addictive diseases."

25 Do you see that?

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1 A I do.

2 Q And you were aware then when you were
3 Commissioner, the charge of the Department was to
4 administer and supervise the State programs for mental
5 health?

6 A Yes.

7 Q And in Section 2 it says that it was "also the
8 responsibility of the Commissioner to direct, supervise
9 and control the medical and physical care and
10 treatment, recovery and social employment, housing and
11 community supports and services based on single or
12 co-occurring diagnoses provided by the institutions,
13 contractors and programs under its control, management
14 or supervision"?

15 A Yes.

16 Q And basically, under the Department's control,
17 management and supervision were all of the programs
18 with regard to the provision of mental health services
19 for children and adults?

20 A I look at that differently. Contractors and
21 programs under its control, yes.

22 Q Were there other agencies in your view that
23 were charged with the establishing, administering and
24 supervising the State programs for mental health?

25 A Yes.

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1 Q What were they?

2 A The Department of Juvenile Justice and the
3 Department of Education.

4 Q What was the role of the Department of
5 Education with regard to provision of mental health
6 services?

7 A It was my understanding that if a child was in
8 a school system, had an IEP, that it was the school's
9 responsibility to provide for those services that were
10 dictated by an IEP.

11 Q The IEPs were mandated by the IDEA?

12 A Yes.

13 Q And apart from the IDEA, were mental time
14 health services provided to children, the
15 responsibility of the Department of Behavioral Health
16 and Developmental Disabilities?

17 A I'm sorry, could you repeat that one more
18 time, please?

19 Q Yes, apart from the IDEA services, was it the
20 responsibility of DBHDD to design and implement
21 services, mental health services --

22 A Yes.

23 Q -- for children?

24 A Yes.

25 MR. BELINFANTE: I object to the form.

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1 You can answer.

2 BY MS. COHEN:

3 Q Did it share that responsibility with any
4 other agency?

5 MR. BELINFANTE: I object to the form.

6 You can answer.

7 A I don't know.

8 BY MS. COHEN:

9 Q Were you aware of any other agency as
10 Commissioner that shared responsibility for the design
11 and implementation of mental health services?

12 A Yes.

13 Q For children?

14 A Yes.

15 Q What was that?

16 A The Department of Juvenile Justice.

17 Q Apart from the Department of Juvenile Justice,
18 were you aware of any agencies during the time when you
19 were Commissioner that had shared responsibility for
20 the design and implementation of mental health services
21 for children?

22 MR. BELINFANTE: I object to form.

23 You can answer.

24 A The school systems, the local school systems.

25 Q I am referring to State agencies.

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1 A The Department of Education.

2 Q What were the services the Department of
3 Education during your tenure at DBHDD implemented with
4 regard to mental health services for children?

5 A I don't recall the office, but I know that
6 they put a significant amount of attention to a big
7 education initiative that focused on a healthy
8 environment that included mental health, PB -- I don't
9 recall the initiative.

10 Q Did that relate to the provision of mental
11 health services?

12 A I don't know.

13 Q So you don't know whether the Department of
14 Education during your tenure as Commissioner of DBHDD
15 was responsible for the provision and implementation of
16 mental health services for children?

17 A I do not.

18 Q Are you referring to the positive behavioral
19 supports --

20 A Yes.

21 Q -- when you talk about DOE programs?

22 A Yes.

23 Q Do you refer to it here as DOE or GaDOE?

24 A I refer to it as DOE.

25 Q DOE?

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1 A The Department of Education, DOE.

2 Q Had you heard it called GaDOE, Georgia
3 Department of Education?

4 A No.

5 Q As Commissioner, did your Department decide
6 whether or not Georgia would seek funds from the
7 Federal agencies for the implementation of mental
8 health services for children?

9 A Please repeat that one more time.

10 Q Sure. As Commissioner, was it your
11 responsibility or the Department's responsibility to
12 determine whether to apply for funding from the Federal
13 agencies?

14 A Yes.

15 Q Did anyone else share, any other agency share
16 that responsibility?

17 A I don't know.

18 Q Did you participate in negotiations over the
19 State annual budget?

20 A I participated in negotiations of the DBHDD
21 and DCH budgets.

22 Q On behalf of DBHDD when you were Commissioner
23 there and --

24 A Yes.

25 Q -- on behalf of DCH when you were Commissioner

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1 there?

2 A Yes.

3 Q Who were the participants in the various
4 points, points of contact in those negotiations?

5 A I am sorry, who were the participants from?

6 Q From the various players involved in the
7 negotiations with regard to the budget.

8 A The Governor's chief financial officer, our
9 chief financial officer at DBHDD, and at DCH and their
10 teams, and then members of the General Assembly.

11 MS. COHEN: Now let's look at the letter of
12 findings of July 15, 2015, and we will mark it as
13 Exhibit 51 (sic). And it was produced by the
14 State, but I am going to also just use a clean pdf
15 unless there is any objections.

16 MR. BELINFANTE: No objection.

17 MS. COHEN: Did I say 352?

18 MR. HOLKINS: You said 51.

19 MS. COHEN: 351, sorry. We will mark it as
20 Exhibit 351.

21 (Plaintiff's Exhibit 351 was marked for
22 identification.)

23 MS. COHEN: And we can also mark as Exhibit
24 352 at the same time an email from Amy Howell dated
25 July 16, 2015 with the Bates stamp GA01177742, mark

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1 that as Exhibit 352.

2 (Plaintiff's Exhibit 352 was marked for
3 identification.)

4 THE WITNESS: And it is gone again. I am
5 sorry, it is not up again.

6 BY MS. COHEN:

7 Q We will get it up for you.

8 A Okay. While you are pulling that up, 351, the
9 appropriations is 341 over at the Capitol, in case you
10 were wondering. That was just filler time while it is
11 being pulled up.

12 MR. BELINFANTE: The Supreme Court too.

13 THE WITNESS: In 341?

14 MR. BELINFANTE: Yes.

15 A Okay, it is up.

16 Q Is this a copy of, we are looking at Exhibit
17 352 right now, an email from Amy Howell dated July 16,
18 2015, was Amy Howell a State employee at that time?

19 A Yes.

20 Q In what capacity did she serve?

21 A She was general counsel for the Department of
22 Behavioral Health and Developmental Disabilities.

23 Q By this email, did she send you a copy of the
24 DOJ letter of findings?

25 MR. HOLKINS: Mr. Berry, you have the control

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1 of the document if you want to scroll.

2 THE WITNESS: I am trying to scroll to see if
3 there was an attachment.

4 A Yes.

5 BY MS. COHEN:

6 Q You recall that she sent you a link?

7 A Yes.

8 Q So that you could get to the finding letter?

9 A Yes.

10 Q And let's look at 351. That is the finding
11 letter. Did you review this on or about July 15th or
12 16th?

13 A Yes.

14 Q Did you discuss it with your general counsel,
15 Amy Howell?

16 A Probably.

17 Q Prior to receiving this letter, you were aware
18 that the Department of Justice was investigating the
19 GNETS program; is that right?

20 A Yes.

21 Q Had you discussed the GNETS program with
22 members of your staff prior to receiving the letter?

23 A No, not that I recall.

24 Q After you received the letter, did you have
25 conversations about the letter with members of your

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1 staff?

2 A Yes.

3 Q Were any of those conversations outside the
4 presence of counsel?

5 A I don't recall.

6 Q Did you give any instructions to your staff
7 with regard to collaborating with the GNETS program
8 when you received this letter?

9 A Not that I recall.

10 Q Did you have conversations about the letter
11 with Judy Fitzgerald?

12 A I don't recall.

13 Q Did you review the letter of findings in
14 connection with preparing for this deposition?

15 A I did not.

16 Q So in 2015 you received this and the
17 Department of Justice took the position that the
18 State's resources should be redirected to offer other
19 effective behavioral and mental health education, were
20 you aware of that?

21 A Please repeat the question.

22 Q Sure. And I will actually refer you, I am
23 paraphrasing from a paragraph on Page 3 of the letter.
24 Do you see where it says, "We conclude that the State's
25 administration of the GNETS program violates Title 2.

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1 The State administers the GNETS program in a manner
2 that results in students with disabilities being
3 unnecessarily segregated from their peers"? Did that
4 come to your attention in 2015 when you looked at the
5 letter?

6 A Yes.

7 Q And did you agree with that comment?

8 MR. BELINFANTE: I object to the form.

9 A I believe that back then that everything
10 should be done to keep children and families together
11 in their own homes and in their own communities and in
12 their own schools. But by that point, I had recognized
13 that there are shades of gray at times.

14 I don't know what the best alternative was,
15 but I cannot say that I agreed with this
16 wholeheartedly, but I believe that children and
17 families should be served together and that children
18 should be able to be served in their own homes and
19 schools.

20 BY MS. COHEN:

21 Q Apart from whether you -- did you investigate
22 that situation at all?

23 A No.

24 Q Did you believe it was within your charge at
25 DBHDD to investigate the services that were being

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1 provided to individuals with disabilities in the GNETS
2 schools?

3 A No.

4 Q Did you believe the Department had any
5 responsibility for seeing whether or not the services
6 provided to those children were adequate?

7 A I did not believe that we had any legal
8 authority to look at what GNETS or the school system
9 was doing in their school systems.

10 Q Did you believe that you had a legal
11 responsibility to see whether individuals with mental
12 health disabilities were receiving adequate services?

13 A Not in the school system.

14 Q Did you look into whether the individuals in
15 the GNETS program were receiving services in other
16 ways?

17 MR. BELINFANTE: I object to the form.

18 A Not that I recall.

19 BY MS. COHEN:

20 Q You didn't look into that?

21 A I did not.

22 Q You knew from your experience at the
23 Gwinnett-Rockdale-Newton CSB, that CSBs terminated or
24 suspended services while students were in the GNETS
25 program?

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1 A Yes.

2 Q Did that raise concerns for you as
3 Commissioner as to whether when the Department of
4 Justice said that the services were inadequate and that
5 children in the GNETS system could be adequately served
6 with appropriate supports in the general education
7 school, did that cause you to investigate?

8 A No.

9 Q Did it cause you to take any action?

10 A The action we took was to be responsive when
11 we were asked to meet with DOE to discuss GNETS. And
12 our team met with DOE along with, I believe, the
13 Department of Community Health at the time to discuss
14 how to remedy, potential remedies.

15 Q And that was at the invitation of counsel?

16 A I believe so.

17 Q And did those meetings take place with counsel
18 present?

19 A I believe so.

20 Q And as a result of those meetings, what action
21 did DBHDD take to remedy the situation?

22 A I don't believe that we took any action
23 because I don't believe we felt that it was DBHDD's
24 responsibility.

25 Q I didn't ask you why, I asked you whether

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1 DBHDD took any action.

2 A Not that I recall.

3 Q From your work at the CSB, you were aware at
4 the time the DOJ letter of findings was received, that
5 supports and services that CSB provided were capable of
6 supporting children in general education schools?

7 A Please repeat that.

8 Q Yes, I don't think it was a great question.
9 Let me back up.

10 From your experience at the CSB, it was your
11 belief that with additional services and supports in a
12 general education school, students could attend those
13 schools rather than a segregated school?

14 A Yes.

15 MS. COHEN: Now let's look at Page 14 of the
16 letter, Patrick. Thanks.

17 A Okay.

18 Q Do you see the sentence that Patrick has
19 highlighted for us?

20 A Yes.

21 Q It says, "The State fails to ensure that
22 students with behavioral-related disabilities receive
23 services with supports including effective and
24 coordinated mental health services which could enable
25 them to remain in or be returned to integrated

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1 education placements appropriate to their needs."

2 You agreed with that at that time, didn't you?

3 MR. BELINFANTE: I object to the form.

4 A I don't recall whether I agreed or disagreed
5 with it.

6 BY MS. COHEN:

7 Q Do you agree with it now?

8 MR. BELINFANTE: I object to form.

9 A I agree.

10 Q You agree now that the State failed to ensure
11 that students with behavioral-related disabilities
12 received appropriate services and supports to remain in
13 general education schools?

14 A Again, it is hard to one hundred percent say I
15 agree, because there are pockets where when you deliver
16 community-based services in the schools, things can be
17 successful. But there are also times when states or
18 communities have had to remove --

19 Q Let me ask you something else, Commissioner.
20 Maybe it will help you answer my question, which is,
21 sometimes services are not effective for whatever
22 reason; is that right?

23 A Yes.

24 Q And is the reason that you can't one hundred
25 percent agree because sometimes it is hard to determine

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1 what the cause of a failure of service is?

2 A Yes.

3 Q But you do agree that the State failed to
4 provide appropriate services in the schools to support
5 individuals with mental health problems?

6 MR. BELINFANTE: I object to the form.

7 A I believe the State could have done a, could
8 do a better job of providing more supports and services
9 in a general school setting. I don't know that I would
10 categorize it as the State has failed, but I believe
11 the states, all states and communities and school
12 systems along with providers and partners can do a
13 better job of serving children in schools.

14 BY MS. COHEN:

15 Q Was that your belief in 2015?

16 A Yes.

17 Q Did you discuss that belief with counsel in
18 2015?

19 MR. BELINFANTE: I object.

20 Don't answer anything that requires you to
21 talk about conversations you had with counsel.

22 MS. COHEN: Thanks. I hadn't made the record
23 clear and I just wanted to, that you would instruct
24 him not to answer on any conversations with counsel
25 with respect to this subject.

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1 MR. BELINFANTE: That's right, yes.

2 MS. COHEN: I think we are going to take a
3 break now. Another electronic problem.

4 THE VIDEOGRAPHER: We are off the record at
5 2:01 p.m.

6 (Recess.)

7 THE VIDEOGRAPHER: Back on the record at 2:13
8 p.m.

9 BY MS. COHEN:

10 Q So, Commissioner, when you were Commissioner
11 of DBHDD, you thought it was important that children
12 receive appropriate services and supports to remain in
13 a general education setting?

14 A Yes.

15 Q You also thought it was important that a child
16 not be put in a more restrictive setting until it was
17 established that appropriate services and supports
18 could not aid the child in remaining in the --

19 A Yes.

20 Q -- general ed setting?

21 MS. COHEN: Now let's move on. I don't know
22 about everybody else, but I seem to have lost my
23 internet connection. Let me see if I can fix that.

24 This is a whole new realm of problems that
25 didn't exist when I started practice. How about

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1 you, Josh?

2 MR. BELINFANTE: That's right, the same.

3 MS. COHEN: But we appreciate you working with
4 us, getting it done.

5 MS. HUGHES: I miss all the paper. I know you
6 don't miss it, right?

7 MS. COHEN: I don't miss it. Carrying it
8 around was terrible.

9 THE VIDEOGRAPHER: Off the record at 2:15.

10 (Recess.)

11 THE VIDEOGRAPHER: Back on the record at 2:18
12 p.m.

13 (Plaintiff's Exhibit 353 was marked for
14 identification.)

15 BY MS. COHEN:

16 Q We are going to show you a new exhibit, and
17 this is, what did you tell me, 353, and mark as Exhibit
18 353 the final report of the Youth Mental Health and
19 Substance Use Disorders Senate Subcommittee 2015. And
20 it has been stamped with the Bates numbers GA00073996.
21 Are you familiar with this report?

22 A No, I am not.

23 Q You were familiar with the Senate committee,
24 right?

25 A I don't recall this committee.

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1 Q Let me see if I can jog your memory. In late
2 2015, a committee of the Georgia Senate studied mental
3 health and substance abuse issues and invited you as
4 Commissioner of DBHDD and Dr. McGiboney from DOE to
5 come and testify. Does that refresh your recollection?

6 A It does not.

7 Q How about if I say you brought with you an
8 individual named Mr. Fretwell, and that Mr. Fretwell
9 gave testimony on behalf of DBHDD, do you know who
10 Mr. Fretwell is?

11 A Yes.

12 Q Who is he?

13 A He was the director at the time I believe of
14 Substance Use Preventive Services -- Prevention.

15 Q And he gave testimony at that time and you
16 went with him?

17 A I don't recall going with him, but if it is on
18 the record, then that's the case. But I don't recall
19 that meeting.

20 Q Let's look at the report at Page 3. And
21 Dr. McGiboney, this records his discussion that,
22 "Advances in behavioral treatment such as improving the
23 school climate by providing a solid foundation of
24 general behavior intervention and prevention principles
25 such as PBIS can have a tremendous impact on children."

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1 Do you recall his testimony?

2 A I do not.

3 Q Do you agree with it?

4 A Yes.

5 Q Did you obtain a copy of the report at the
6 time it issued?

7 A I don't recall.

8 Q Do you recall where DOE or DBHDD had an
9 official reaction to the report?

10 A I don't recall.

11 Q Did you consult with Dr. McGiboney or anyone
12 else about testifying and the report?

13 A I don't recall.

14 Q At Page 12, the Committee recommended an
15 increase in funding for behavioral therapy. Do you see
16 that?

17 A Yes.

18 Q It also found a lack of clinical services in
19 Georgia school system. Did you concur in those
20 recommendations?

21 A I concur now. I don't recall whether I
22 concurred then.

23 Q In the testimony, neither Mr. Fretwell nor
24 Dr. McGiboney mentioned GNETS. I represent that to
25 you. Was the failure to mention -- did -- let me back

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1 up.

2 Did you consider GNETS to provide effective
3 behavioral therapy treatment in 2015?

4 A I didn't think -- I never thought about that.

5 Q You never thought about it at all?

6 A No.

7 Q As part of the mental health block grants when
8 you were Commissioner at DBHDD, did you have an
9 obligation to provide annual reports to SAMHSA?

10 A Yes.

11 MS. COHEN: Let's mark as Exhibit 354 a copy
12 of the 2015 Mental Health Block Grant Annual
13 Report. This is one that I have downloaded from
14 the internet at the suggestion of your office,
15 Josh, and we have given it the Bates designation
16 R002809.

17 MR. BELINFANTE: Okay.

18 (Plaintiff's Exhibit 354 was marked for
19 identification.)

20 BY MS. COHEN:

21 Q Are you familiar with this annual report, Mr.
22 Berry?

23 A I am familiar that we submitted reports. I
24 don't know that I am familiar with this particular
25 report.

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1 Q Have you ever seen it before?

2 A I don't recall.

3 Q You are listed on the first page as the
4 contact person --

5 A Yes.

6 Q -- for the grantee of the block grant. Do you
7 see that?

8 A Yes, I do.

9 Q Were you aware at the time that you were the
10 contact person for the grantee of the block grant?

11 A Yes.

12 Q Rough numbers, how much money did DBHDD
13 receive under this block grant?

14 MR. BELINFANTE: I am sorry, who is
15 controlling this, is it the witness?

16 MR. HOLKINS: Right now we have control. We
17 can give control to the witness if you prefer.

18 MS. COHEN: Did we give Josh a copy?

19 MR. HOLKINS: I have not given him a copy of
20 this.

21 MS. COHEN: Let's email him a copy.

22 MR. HOLKINS: I have to stop sharing my screen
23 to do that.

24 MR. BELINFANTE: It's okay.

25 MS. COHEN: If you want a copy, we can email

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1 it to you right now.

2 MR. BELINFANTE: Sure, but no, we can keep
3 going. I mean, if you need to see the document
4 other than the first page.

5 BY MS. COHEN:

6 Q Would you like control of it?

7 A No, it is fine. It is not up now.

8 Q That is because we are emailing it to counsel.

9 MR. HOLKINS: It is in transit.

10 MR. BELINFANTE: Thanks.

11 MR. HOLKINS: I will put this back up.

12 Q So rough numbers, how much did DBHDD receive
13 under the block grant?

14 A I don't know.

15 Q You don't know?

16 A No.

17 Q What was the budget of DBHDD, rough numbers,
18 in 2015?

19 A About 1.3 billion.

20 Q That was 1.3 billion in State appropriation?

21 A That may have been a combination of state and
22 Federal funds.

23 Q In fact, it was the total amount spent by,
24 under the Department's supervision in state and Federal
25 funds for mental health and developmental disability

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1 services, right?

2 A And substance use.

3 Q And substance use, I forgot.

4 How much of that was to provide behavioral
5 health services to children and adolescents, just
6 ballpark.

7 A Under \$100 million.

8 Q Under 100 million?

9 A I don't know. Let me reframe that, I don't
10 know.

11 Q But that's your sense of numbers?

12 A No. After thinking about it for a second, I
13 don't know how much of it went to child and adolescent
14 services.

15 Q Why did you come up with 100 million?

16 A I was thinking of our crisis stabilization
17 units that we ran and put a concrete State dollar
18 figure with those, and then some of the system of care
19 work that we did, but I don't know how much dollars
20 went out for uninsured children to the community
21 service boards or other providers. And I think that
22 would increase that number.

23 Q Let's look at Page 14 where the report states
24 in school year, school fiscal -- State fiscal year,
25 excuse me, in State fiscal year 14, there were 72,136

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1 children and adolescents ages 4 to 17 with a behavioral
2 health diagnosis receiving at least one behavioral
3 health service out of 173,461 use with a behavioral
4 diagnosis served in the public mental health system.

5 Do you see that?

6 A I do.

7 Q And the report goes on to say, "This
8 represents 41.59 percent of the youth served in the
9 public mental health system based on claims and
10 encounters data." Do you see that?

11 A Yes.

12 Q What is claims and encounters data,
13 Commissioner?

14 A If a provider delivers a service, that would
15 be an encounter. And then they submit for
16 reimbursement, which would be a claim for reimbursement
17 from either a state, the State or from -- I don't know
18 if this includes the CMOs or not. But a claim and
19 encounter is, you deliver a service and then you get
20 reimbursed for a claim.

21 Q And DBHDD tracked its claims and encounters
22 data?

23 A Yes.

24 Q And these figures in the report were provided
25 by individuals working for DBHDD who served under you?

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1 A Say that again.

2 Q The figures in the report came from people who
3 worked for you at DBHDD?

4 A The figures in the report were more than
5 likely pulled from the system of providers who were
6 submitting this information to the Department and the
7 Department would compile this data.

8 Q So the individuals who worked for the
9 Department of Behavioral Health Services, DBHDD,
10 compiled this information?

11 A Yes.

12 Q And they believed it to be true and accurate
13 at the time that they compiled it?

14 A Yes.

15 Q And you believed it to be true and accurate at
16 the time the report was submitted?

17 A Yes.

18 Q So is it fair to say that the population --
19 excuse me -- is it fair to say that the population of
20 children and adolescents ages 14 to 17 -- excuse me,
21 ages -- sorry, Commissioner, I don't know what that
22 noise is. We have had a large number of electronic
23 hangups today.

24 A I have lived with that for ten years.

25 MS. HUGHES: It is a train.

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1 A After working here for so long, you get used
2 to it, even after coming back after a year being away.
3 BY MS. COHEN:

4 Q At Page -- is it fair to say that the
5 population of children and adolescents in Georgia ages
6 4 to 17 with a behavioral health diagnosis was
7 substantially underserved?

8 A I don't know.

9 Q So at the time when you were Commissioner of
10 DBHDD, was the population of children age 4 to 17 with
11 a behavioral health diagnosis underserved?

12 A I don't know.

13 Q Did you consider it within your
14 responsibilities at the time to look into whether there
15 were adequate services provided for behavioral health
16 diagnoses to children between the ages of 4 and 17?

17 A Yes. I looked at it as, so DBHDD served the
18 uninsured and there were mechanisms for the rest of the
19 population to get their services. When I was
20 Commissioner of DBHDD, I was under the impression that
21 the CMOs were delivering the care to the majority of
22 children, and I did not look to see whether they were
23 underserved or not.

24 Q So my question was, did you consider it within
25 your responsibilities at the time to look into whether

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1 that population received adequate services?

2 A I did not. I did not look into it. Was it my
3 responsibility? Yes.

4 Q It was within your responsibility?

5 A Yes.

6 Q And you alluded to the provision of insurance
7 for treatment, to cover services provided to children
8 with mental health diagnoses?

9 A Say that one more time.

10 Q Yes. I heard you to refer to the
11 responsibility of different agencies with respect to
12 this population.

13 A Yes.

14 Q Is what you were referring to that the
15 responsibility to pay for services provided is divided
16 among different agencies?

17 A Yes.

18 Q Such that DBHDD had responsibility for SSI
19 recipients?

20 A No.

21 Q No?

22 A So I looked at it as uninsured children, DBHDD
23 was the safety net for them, and we looked at it as
24 before school and after school and on weekends. And
25 the care management organizations for insured children

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1 were responsible for behavioral health, mental health
2 care primarily before school, after school and on
3 weekends for those insured, and during the day it was
4 Education's responsibility to provide those services.
5 That's how we looked at it as a State.

6 Q Understood. What you are referring to is
7 paying for services?

8 A Yes.

9 Q And my question relates to determining what
10 services shall be provided. Did the Department of
11 Behavioral Health and Developmental Disabilities during
12 your time as Commissioner have the responsibility to
13 determine what behavioral health services should be
14 provided?

15 A Yes, with the focus on before school and after
16 school and on weekends, not during the school day.

17 Q So the Department of Behavioral Health and
18 Developmental Disabilities had no responsibility during
19 the years between 2012 and 2016 to provide treatment
20 services during the entire day to individuals, children
21 with behavioral and developmental disabilities?

22 MR. BELINFANTE: I object to the form.

23 You can answer.

24 A We did not believe that that was our
25 responsibility, to be in the schools.

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1 BY MS. COHEN:

2 Q And there is nothing, of course, in the DBHDD
3 enabling legislation that supports a distinction
4 between the responsibility of DBHDD during the school
5 day and otherwise, is there?

6 A I don't believe there is.

7 MR. BELINFANTE: I object to form.

8 A I don't know. I don't believe so.

9 BY MS. COHEN:

10 Q In this report in the same section, there is a
11 requirement to describe the target for the coming year.
12 Were you aware of that?

13 A Yes.

14 Q And here it states that, "The target for the
15 coming year is to increase the number of youth served
16 by 100."

17 A Yes, I see that.

18 Q Why was the target so modest when there were
19 so many thousands of children not receiving services?

20 A I don't know.

21 Q Let's look at Page 23 in the Section III of
22 this report, Expenditure Reports, and you can see there
23 is a table. And it reports children -- the set-aside
24 for children's mental health services. Is the
25 reporting here of the total expenditures for children

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1 and youth receiving mental health services?

2 A I am sorry, is there more to the question?

3 Q No.

4 A Could you reask it again, please?

5 Q Sure. Is the reporting here in this Table 4,
6 is that the total expenditures for children and youth
7 receiving mental health services?

8 A I don't recall what our total spend was.

9 Q Did you verify it at the time?

10 A I don't recall.

11 Q There is an estimated spend for or
12 estimated/actual. What does that refer to,
13 estimated/actual in the column furthest to the right?

14 A It probably was when the report was generated,
15 what we were thinking it was going be and then what the
16 actual. So the first two years we probably had
17 concrete closeout, year-end closeout of what it
18 actually was. This was probably too close to the time
19 the report was generated to have a finalized, I would
20 suspect, audited, to make it actual.

21 Q But you needed to report to SAMHSA that you
22 were spending more --

23 A Yes.

24 Q -- than you had in previous year?

25 A Yes.

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1 Q And the amount in State fiscal year 2014 was,
2 rough numbers, \$66 million?

3 A Yes.

4 Q Are you familiar with the amount of the GNETS
5 budget at that time?

6 A No.

7 Q Do you know what the amount of the GNETS
8 budget was at any time?

9 A No.

10 Q Did you ever look into it?

11 A No.

12 Q So you were Commissioner of DBHDD?

13 A Yes.

14 Q And you had a population, according to this
15 report, that was not receiving services, was not
16 receiving services, and you knew that -- did you know
17 that GNETS had a budget coming from the State?

18 A Yes.

19 Q And you knew that the State was appropriating
20 money every year to pay for the GNETS program?

21 A No, I did not know that. I didn't know if it
22 was Federal or state money.

23 Q Did you ever look at the possibility while you
24 were Commissioner of DBHDD of examining the GNETS
25 system to see whether it could be more, more effective

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1 treatment could be made through school-based mental
2 health services?

3 A No.

4 Q If I told you that the amount of the GNETS
5 budget was roughly between 60 and \$70 million for this
6 fiscal year, does that refresh your recollection?

7 A For this fiscal year?

8 Q No.

9 A For that fiscal year?

10 Q That fiscal year, 2014.

11 A It does not. I don't remember.

12 Q Would 60 or \$70 million have been a material
13 figure to the State's expenditure for children and
14 adolescent mental health at that time?

15 A Can you explain, ask the question again,
16 please?

17 Q Would 60 or \$70 million have been a material
18 additional figure if the State were able to take money
19 from the GNETS program and put it into the services
20 that DBHDD was overseeing for children and adolescents
21 with mental health services? Would that have been a
22 material addition?

23 A Yes.

24 Q Let's look at the CBAY waiver. We are going
25 to mark -- are we up to 355? We are going to mark

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1 three exhibits, 355, 356 and 357.

2 And those are three documents, I am going to
3 identify them and then ask you to identify them, but
4 just for purposes of marking them, the three documents
5 related to the waiver are a public notice from 2015, a
6 CBAY fact sheet, and a Center of Excellence document
7 describing the waiver.

8 A Okay.

9 Q As soon as we get them pulled up, we will
10 number each one of them.

11 So the first one we have is the public notice.

12 MS. COHEN: We will mark that as Exhibit 355.

13 (Plaintiff's Exhibit 355 was marked for
14 identification.)

15 MS. COHEN: Pull up the next one. We will
16 mark the CBAY fact sheet as Exhibit 356.

17 (Plaintiff's Exhibit 356 was marked for
18 identification.)

19 MS. COHEN: And then the Center of Excellence
20 document will be 357.

21 (Plaintiff's Exhibit 357 was marked for
22 identification.)

23 BY MS. COHEN:

24 Q Looking at the public notice, can you identify
25 that document?

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1 A Yes.

2 Q And this is the CBAY waiver that you testified
3 about previously?

4 A Yes.

5 Q And that was the one that was approved in
6 2015?

7 A I believe so.

8 Q And you had done some work advocating for it
9 on behalf of the Gwinnett, Rockdale and Newton
10 Community Services Board?

11 A Yes. By then it may have been Viewpoint
12 Health.

13 Q Or on behalf of Viewpoint Health?

14 A Yes.

15 Q But whoever it was, you were advocating for
16 it?

17 A Yes.

18 Q Because you thought it was important to enable
19 school-based mental health services in the local public
20 schools?

21 A Along with other community mental health
22 services, schools, yes, along with others.

23 Q So you were actually advocating for the
24 provision on the CMS waiver of mental health services
25 to children during the school day; is that correct?

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1 A Yes.

2 Q And that's because the interface between
3 children and the opportunity to provide services is at
4 its height during the school day, is that right, for
5 most children?

6 A And after school.

7 Q But children spend a significant portion of
8 their day in school; isn't that correct?

9 A Yes, they do.

10 Q And after school, children go in different
11 directions?

12 A Yes. The one caveat, though, is that not all
13 children want to get their mental health services in a
14 school-based setting. So it is not just --

15 Q My question to you was whether children spend
16 a significant part of their day in school.

17 A Yes.

18 Q And during that time, mental health services
19 can be made available to them?

20 A Yes, they can.

21 Q And that's an effective period of time to
22 offer mental health services?

23 A For some children, yes.

24 Q For the majority of children in the school
25 system who need mental health treatment, right?

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1 A I don't know if it is the majority. I would
2 say for many. I don't know if it is the majority.

3 Q Perhaps you would agree it is a significant
4 portion of the population?

5 A I would say it is a -- I don't know if I would
6 say significant. I don't know.

7 Q You just don't know?

8 A No.

9 Q Okay. Can you identify this exhibit, 255, the
10 public notice -- 355, excuse me.

11 A Can I, I am sorry?

12 Q Can you identify it?

13 A Yes.

14 Q What is it?

15 A It is the public notice that went out as part
16 of the application or the proposal to CMS. You have to
17 do a public notice in order to get a waiver.

18 Q So it is legally required and you were
19 informing the community that a waiver was being sought?

20 A Correct.

21 Q And then if I scroll down, it says that, "The
22 target population," and I am moving my cursor under it
23 in the second full paragraph, "The target population
24 includes individuals ages 4 through 21 with" severe --
25 "serious emotional and behavioral disturbances as a

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1 primary diagnosis of mental illness."

2 Do you see that?

3 A I do.

4 Q It goes on to say that, "CBAY focuses on
5 intensive family-driven care management services which
6 coordinates behavioral health services to help sustain
7 the family in the community and reduce reliance on
8 residential treatments."

9 Do you see that?

10 A Yes.

11 Q And was that your belief at the time?

12 A Yes.

13 Q That intensive family-driven care management
14 service to coordinate behavioral health services would
15 help sustain the family in the community and reduce the
16 reliance on residential treatment?

17 A Yes.

18 Q What are these number figures that are
19 attached to the public notice?

20 A Those are the reimbursement rates for services
21 that could be offered by a provider under the CBAY
22 waiver.

23 Q Why were they published with the public
24 notice?

25 A I think it was a requirement by CMS that you

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1 publish your rates.

2 Q So this is a fact sheet by Parent to Parent of
3 Georgia. Are you familiar with that organization?

4 A I am not familiar with Parent to Parent.

5 Q Let's look at the fact sheet here. It says,
6 "CBAY is the five-year Federal demonstration grant
7 project targeting children who have been diagnosed with
8 serious emotional and behavioral disturbances."

9 That's accurate?

10 A Yes.

11 Q And then it goes on to say that it was a very
12 competitive process to get the CBAY grant. I am
13 paraphrasing. It says Georgia, quote, "Georgia is one
14 of ten states"?

15 A Yes.

16 Q "Who received this grant award," close quote.

17 A Yes.

18 Q That's accurate to your knowledge?

19 A Yes.

20 Q So it is a very competitive process to get
21 this --

22 A Yes.

23 Q -- waiver. Do you know whether the other ten
24 states with the waiver have all sunsetted it?

25 A I don't know.

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1 Q Did you make any inquiries with CMS in an
2 effort to prevent the termination of the waiver?

3 A The Department may have. I didn't -- I don't
4 know.

5 Q Let me show you 357 which is the third of
6 these documents. This is a sheet on high-fidelity
7 wraparound prepared by the Center of Excellence in
8 October 2018. Did you receive a copy of that at the
9 time?

10 A Yes.

11 Q From the Center of Excellence?

12 A I don't recall from who.

13 Q Did you review it at the time?

14 A Yes.

15 Q In the section called Why Wraparound, do you
16 see that with bullets?

17 A Yes.

18 Q It says, "The purpose of the wraparound was to
19 ensure that caregivers and youth have access to needed
20 resources, supports and services."

21 And you agree with that?

22 A Yes.

23 Q "And also to ensure family voices are heard
24 and that they are full decisionmakers in charge of
25 their own lives."

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1 Do you agree with that?

2 A Yes.

3 Q And in what way did the wraparound ensure that
4 families' voices were heard and that they were full
5 decisionmakers?

6 A We had family members that served on advisory
7 boards. We had encouraged family members to be an
8 active member of their child's treatment team. We
9 had -- we hired in the early -- in the mid-1990s,
10 families who had gone through the system to help other
11 families navigate the complex systems.

12 We believed that the key to a child's success
13 was engaging the whole family and families had a voice
14 at the table and were the drivers of what their
15 families needed; not the traditional way of thinking
16 that the mental health people were the experts, but
17 that the families were the experts.

18 Q And the third bullet says, "To ensure the
19 wraparound to ensure families have ownership of the
20 planning process in partnership with the team and are
21 in agreement and committed to carrying out the plan."

22 And I gather you agree with that as well?

23 A Yes.

24 Q It says here that there is an initial
25 demonstration grant that ended in September of 2012?

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1 A Yes.

2 Q And thereafter, DBHDD sustains the program
3 through a combination of Federal and state-funded
4 sources.

5 A Yes.

6 Q Do you remember what the cost of this program
7 was approximately?

8 A I do not.

9 Q Was it more or less than \$70 million?

10 A I don't recall.

11 Q Even rough numbers?

12 A I don't.

13 Q So the APEX pilot, I think you testified, was
14 launched in 2015?

15 A Roughly, I believe so.

16 Q With funding from SAMHSA?

17 A I don't recall whether it was SAMHSA money or
18 State funds.

19 Q That's right, I am sorry, you testified to
20 that. What was the impetus for the creation of the
21 APEX program?

22 A An additional tool in the tool belt to help
23 serve children and keep them in their homes and offer
24 additional supports.

25 Q Now, we haven't talked about multi-tiered

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1 service delivery programs. Are you familiar with that
2 term?

3 A Multi-tiered, no.

4 Q No. Are you familiar with PBIS, positive
5 behavioral supports?

6 A Yes.

7 Q And did you know that that is a multi-tiered
8 system?

9 A No.

10 Q You didn't?

11 A No.

12 Q You are not familiar with the concepts of Tier
13 1 being the general population, Tier 2 being a
14 population that requires more intensive care, and Tier
15 3 being a population that requires intensive supports?

16 A Not that I recall right now.

17 Q So you don't know, you are just not familiar
18 with that, okay.

19 MS. COHEN: I want to mark as Exhibit 358 what
20 I am going to represent is a download from the
21 current DBHDD website, and it is a download of
22 frequently asked questions regarding APEX.

23 (Plaintiff's Exhibit 358 was marked for
24 identification.)

25 BY MS. COHEN:

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1 Q Have you seen this before, Commissioner? We
2 will give you control.

3 A No.

4 Q Let me direct your attention to a question,
5 "In which types of schools can APEX be implemented?"
6 Do you see that?

7 A Yes.

8 Q It straddles Pages 2 and 3 of this Exhibit
9 358.

10 A Yes.

11 Q And it talks about APEX therapists, clinicians
12 and behavioral health support staff embedded within
13 public schools and public charter schools. You are
14 familiar with that?

15 A Yes.

16 Q And they also help with life skills
17 development and other non-therapeutic activities. That
18 is accurate as far as you know?

19 A Yes.

20 Q It says that, "APEX services cannot be
21 provided in private charter schools, GNETS stand-alone
22 facilities," and et cetera.

23 What was the reason that APEX services could
24 not be provided in GNETS stand-alone facilities?

25 A I don't know.

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1 Q What was the policy when you were Commissioner
2 of DBHDD?

3 A I don't know.

4 Q What was DCH's participation in APEX?

5 A I don't recall what DCH's -- I don't know that
6 DCH had a role in APEX.

7 Q So DCH was not a collaborator with APEX --
8 excuse me -- with DBHDD in APEX when you were
9 Commissioner of DCH?

10 A I don't recall. I don't recall Medicaid
11 funding APEX, which is what DCH's role would have been,
12 and I don't recall whether they were or were not.

13 Q DCH and DBHDD each have a manual, right?

14 A Yes.

15 Q And was that one of your innovations at DCH or
16 did it always have a manual?

17 A Always had a manual.

18 Q What is the purpose of the manual at DBHDD?

19 A I believe to lay out the category of services
20 and the requirements that you need to meet in order to
21 deliver those services, provider manual, if that is
22 what you are referencing.

23 Q Yes. So the provider manual described the
24 services that were reimbursable under the Georgia State
25 Medicaid program?

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1 A Yes.

2 Q Is the provider manual for DCH, does it have a
3 similar purpose?

4 A Yes.

5 Q And it described the qualifications for
6 providers?

7 A Yes.

8 Q And what certifications or licenses they
9 needed?

10 A Yes.

11 Q One of the roles of DBHDD vis-a-vis the
12 Medicaid program was determining what services would be
13 provided under the Georgia State Medicaid program?

14 A Say that again.

15 Q Yes. It was the role of DBHDD in creating
16 this provider manual to make a determination of what
17 services would be provided for behavioral health?

18 A Yes, they coordinated with DCH on, here are
19 the behavioral health services that we would like to
20 have, I called it Medicaid-reimbursable, Medicaid-able,
21 if you will.

22 Q You used the term "like." The provider manual
23 actually established the requirements for which
24 services were Medicaid-able, in your language, right?

25 A Say it one more time.

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1 Q Sure. The provider manual for DBHDD set forth
2 the services that DBHDD had agreed to provide under the
3 State Medicaid plan?

4 A Through its network of providers.

5 Q Yes.

6 A Yes.

7 Q And I think you just said that it collaborated
8 with DCH to some extent on that on its manual?

9 A For Medicaid-reimbursable services, yes.

10 Q And through that collaboration, it was
11 determined what Medicaid services under the Georgia
12 State plan would be reimbursable by DCH?

13 A Yes.

14 Q And there were requirements for certification
15 or licensing requirements under Georgia State law?

16 A Yes.

17 Q And that was one of your roles as
18 Commissioner, to review the manual and the services
19 offered and make sure that they were appropriate?

20 A It was the responsibility of our Medicaid team
21 to make certain of that.

22 Q Under -- reporting to you?

23 A Yes, two layers below, but, yes.

24 Q So this Medicaid team would determine, their
25 role was to determine what services were appropriate

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1 for reimbursement?

2 A The Medicaid team's role was to look at
3 regulatory compliance and finance as it related to
4 Medicaid services. So they, if a DBHDD needed a
5 certain type of service that they thought would be
6 helpful to treat people with significant, serious
7 persistent mental illness, then DBHDD would usually
8 present an evidence-based practice that had been
9 approved by SAMHSA and then request that DCH get that
10 in the State plan so that it could be reimbursed by
11 Medicaid.

12 Q And the services that DBHDD requested were
13 services in DBHDD's judgment that were necessary for
14 successful behavioral services for this population?

15 A Yes.

16 Q And DBHDD also had the obligation to provide
17 adequate behavioral health services to this population?

18 A Through its network of providers, yes.

19 Q And DBHDD determined what licensing and
20 certification was necessary to, under Georgia law to
21 perform the services?

22 A Yes.

23 Q This is why collaboration between DCH and
24 DBHDD was necessary to create the APEX system; isn't
25 that right?

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1 A I don't know if APEX was one of those services
2 that was Medicaid-reimbursable, so I don't know if
3 there was coordination on APEX.

4 Q You don't recall that APEX offered a basket of
5 services that was Medicaid-reimbursable?

6 A That's what I don't recall.

7 Q Are you aware of any -- I know you said you
8 didn't remember the FAQ, but are you aware that GNETS
9 stand-alone facilities were excluded from the APEX
10 program?

11 A I was not.

12 Q Are you aware that there has not been any
13 collaboration between APEX and GNETS programs with very
14 narrow exception?

15 A I am not.

16 MS. COHEN: Let's go to, what number are we up
17 to, 359? We need a second.

18 THE WITNESS: You want to break?

19 MS. COHEN: Sure.

20 THE VIDEOGRAPHER: Off the record at 3:11 p.m.
21 (Recess.)

22 THE VIDEOGRAPHER: We are back on the record
23 at 3:18 p.m.

24 (Plaintiff's Exhibit 359 was marked for
25 identification.)

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1 BY MS. COHEN:

2 Q We have marked as Exhibit 359 a July 2019
3 email from Erica Fener Sitkoff of Georgia Voices which
4 was marked when produced GA00004975 and attachment
5 4980. Do you see those, Commissioner?

6 A Yes.

7 Q Let's start with the email. Who is Erica
8 Fener Sitkoff?

9 A She was the executive director of Voices for
10 Georgia's Children.

11 Q What is Voices for Georgia's Children?

12 A An advocacy organization.

13 Q Was that an advocacy organization that
14 advocated for school-based mental health services?

15 A I believe that they were an advocacy
16 organization that advocated for comprehensive
17 children's behavioral health services that included
18 school-based services.

19 Q This is an invitation to a closed-door meeting
20 of advocates. Do you see that?

21 A I do.

22 Q Did you participate in the meeting?

23 A I believe I did.

24 Q Who else participated?

25 A I don't recall who else, but it was a roomful.

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1 But I don't recall individuals that were there.

2 Q Who was there on behalf of State agencies?

3 A I don't recall.

4 Q Why was it called a closed-door meeting?

5 A I don't know why they called it a closed-door
6 meeting.

7 Q Was it by invitation only?

8 A I don't know that either.

9 Q Have you been to other closed-door meetings
10 with advocates before?

11 A I don't recall being, ever attending another
12 meeting that had a title of closed-door meeting.

13 Q Looking at the bottom email, that is an email
14 from Polly McKinney dated July 3, 2019. Who is Polly
15 McKinney?

16 A I think she was a policy director for Voices
17 for Georgia's Children and worked with Erica.

18 Q Her email lists invitees from certain Georgia
19 agencies. Do you see that?

20 A I do.

21 Q DHS?

22 A Yes.

23 Q DCH?

24 A Yes.

25 Q DBHDD?

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1 A Yes.

2 Q DPH?

3 A Yes.

4 Q And then OCA?

5 A Yes.

6 Q And GOSA?

7 A Yes.

8 Q DECAL?

9 A Yes.

10 Q GBI?

11 A Yes.

12 Q Cheryl Benefeld from the DOE K through 12?

13 A Yes.

14 Q DNR?

15 A DHR.

16 Q Excuse me, DHR?

17 A No, no, you are right, it is DNR. DNR, yes, I
18 see that.

19 Q What was DNR?

20 A Department of Natural Resources.

21 Q Do you recall that each of these agencies sent
22 representatives to the event?

23 A I don't recall if these are the people that
24 were at the event. They may have been invited but I
25 don't recall who all attended.

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1 Q But you felt it was of sufficient importance
2 to go?

3 A Yes.

4 Q And this is an event to consider what was
5 necessary to ensure child safety and healthy
6 development?

7 A Yes.

8 Q Looking at the confirmed panelists, Director
9 Rawlings was among them?

10 A Yes.

11 Q And yourself?

12 A Yes.

13 Q And Commissioner Fitzgerald?

14 A Yes.

15 Q And Commissioner Toomey of DPH?

16 A Yes.

17 Q And Rachel Davidson of the Office of Child
18 Advocate?

19 A Yes.

20 Q And Executive Director Hawkins from the
21 Governor's Office of Student Achievement?

22 A Yes.

23 Q And the others listed here?

24 A Yes.

25 Q So each of these individuals felt that this

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1 meeting was of sufficient importance to attend?

2 A Yes.

3 Q There are certain questions that Ms. McKinnon
4 posed that are listed here. Did you respond to those
5 questions on behalf of DCH?

6 A Yes.

7 Q What were the initiatives that you thought
8 should be provided?

9 A So we -- DCH, in my time there, we took the
10 path of, we were the regulatory, compliance and finance
11 agency and relied on the subject matter experts to
12 bring us the initiatives that they needed to serve
13 their populations, and how could DCH then support their
14 initiatives.

15 So DCH was not a service provider, so --
16 stop -- so we didn't -- when I was there for the four
17 and a half years, we really focused on supporting those
18 other agencies with their initiatives because we were
19 an insurance company. Medicaid is an insurance plan,
20 not a service delivery plan.

21 So if DBHDD or DFCS or Juvenile Justice saw
22 that there was something that would, or education, they
23 saw that there was something that they could deliver,
24 it was up to us then to figure out whether we could
25 work with CMS to get CMS to make that a

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1 Medicaid-reimbursable service.

2 So from an initiative standpoint, that's what
3 I spoke about at that conference, or at that
4 presentation.

5 Q You didn't say anything about policy
6 initiatives that you thought were urgent for
7 implementation at that time?

8 A Not that I recall, but I may have, but not
9 that I recall because we were pretty set on laying out
10 exactly what I just said.

11 Q While you were at DCH, did the Department
12 launch any initiatives with regard to service delivery
13 for children and adolescents with serious behavioral
14 health issues?

15 A We partnered with DBHDD to offer services for
16 children on the autism spectrum, but again, the goal
17 was we had to get with CMS to get those new services
18 Medicaid-reimbursable. That was our role.

19 And then DBHDD, through its network of
20 providers, then contracted for those services. So
21 autism was probably the biggest kind of, in the last
22 four to five years, we really need support with autism
23 services, and here's some State funding that can be
24 used as the Federal match, let's use that, draw down
25 the Federal match, let's come up with a State plan

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1 amendment and get autism to be a Medicaid-reimbursable
2 service.

3 Q Were there any other initiatives during your
4 time at DCH?

5 A Not that I recall.

6 Q How often did you meet with disability or
7 education advocacy organizations as Commissioner of
8 DCH?

9 A Very infrequently at DCH.

10 Q Less than once a year?

11 A At DCH, probably once a year.

12 Q How often did you meet with disability or
13 education advocacy organizations when you were at
14 DBHDD?

15 A Three to four times a month.

16 Q So in that role you had more frequent contact
17 with the advocates?

18 A Yes.

19 Q Have you met with Voices for Georgia's
20 Children in connection with your role at DBHDD?

21 A I don't recall.

22 Q Have you met with representatives of Voices
23 for Georgia's Children in your role at DCH?

24 A Yes.

25 Q When was that?

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1 A What was the date of this, from probably once
2 to twice a year from 2016 to 2019.

3 Q What was the subject matter of those
4 conversations?

5 A Autism services, getting funding for autism
6 services; we need support from Medicaid for higher
7 reimbursement rates for this type of a service; we are
8 concerned about children in PRTFs and if there's a way
9 to look at rate increases for PRTFs so that they will
10 be able to serve more children in Georgia; those kinds
11 of discussions.

12 Q Did you have similar discussions with
13 representatives of the ARC?

14 A Not at DCH.

15 Q At DBHDD?

16 A I believe so.

17 Q Were you able to remember the name of any of
18 the representatives of Voices for Georgia's Children
19 that you met with?

20 A Erica Sitkoff and Pauline McKinnon.

21 Q How about at ARC?

22 A I don't recall.

23 Q Are you familiar with the Georgia Advocacy
24 Office, the GAO?

25 A I am.

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1 Q What is the role of the GAO?

2 A To make my head hurt. No.

3 They are an advocacy organization that
4 advocates on behalf of people with significant, serious
5 persistent mental illness and developmental
6 disabilities and other vulnerable populations that may
7 need support from usually the Department of Behavioral
8 Health and Developmental Disabilities or the Department
9 of Community Health.

10 Q And does GAO have official status under the
11 Federal statute?

12 A They do.

13 Q What is that?

14 A They can go in anywhere they want and check on
15 conditions and things like that.

16 Q Do you know the name for their role?

17 A I do not.

18 Q Have you heard reference to a protection and
19 advocacy organization?

20 A I have, yes.

21 Q Do you understand that the GAO has official
22 status as the protection and advocacy organization for
23 individuals in the State of Georgia?

24 A I do.

25 Q And how about the National Alliance for the

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1 Mentally Ill, did you meet with representatives from
2 that group?

3 A Yes, at DBHDD.

4 Q With regard to children's, services to
5 children and adolescents?

6 A No. When I would meet with them, it was more
7 focused on the adult in the settlement agreement that
8 we had with the United States of America's Department
9 of Justice.

10 Q I am going to ask you to go on to the next
11 exhibit now which is 360.

12 MS. COHEN: Can we put that up?

13 Actually, I'm sorry, I don't want to mark
14 that. Let's mark as 360 the government's report.

15 THE WITNESS: And I will start referring to
16 you guys as DOJ. We were once in a meeting and I
17 was told, refer to us as the United States of
18 America's Department of Justice, so I am doing that
19 out of respect, but if y'all are comfortable with
20 DOJ, I will do DOJ.

21 I just wanted to make sure you understood why
22 I was saying that. I don't mean to belabor that.
23 So I just wanted to be respectful of that.

24 MS. COHEN: Thank you.

25 THE WITNESS: Okay.

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1 MS. COHEN: I am going to mark as Exhibit 360
2 roughly a hundred-page document which is titled
3 Georgia Network for Educational and Therapeutic
4 Support Program Evaluation Executive Summary, and
5 it is dated from January of 2015.

6 (Plaintiff's Exhibit 360 was marked for
7 identification.)

8 BY MS. COHEN:

9 Q Have you seen this before, Commissioner?

10 A I have seen it, but I probably did not read
11 it, the whole thing.

12 Q Did you read any part of it?

13 A Yes.

14 Q How did it come to you?

15 A I don't recall.

16 Q Did you read the executive summary?

17 A I believe so.

18 Q No?

19 A I believe so.

20 Q You believe so. Sorry, I misheard you.

21 Did you have any role in writing this report?

22 A I don't believe so.

23 Q Did you see it before it was published?

24 A I don't recall.

25 Q Did you know that the Governor's office, in

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1 October of 2013, the Governor's Office of Planning and
2 Budget Initiative initiated a program evaluation on
3 GNETS?

4 A I don't recall knowing that.

5 Q You weren't aware of that?

6 A I don't recall that.

7 Q Just a second, I have to look up some
8 information.

9 Let's just look quickly at the executive
10 summary which you did read. And in the summary of
11 findings, do you see the first finding?

12 A I do.

13 Q The last sentence says, "With the enhanced
14 emphasis on early intervention and involvement of GNETS
15 trained staff in key decision points, more students are
16 receiving needed services in regular schools rather
17 than entering GNETS."

18 Was that true, to your knowledge?

19 A I don't recall whether that was -- I don't
20 recall that.

21 Q Did you ask the Governor how the GNETS trained
22 staff was contributing to the reduction of children
23 participating in GNETS?

24 A I did not.

25 Q Do you know now?

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1 A No.

2 Q It said that, "The effort of the staff was
3 reducing the number of students that are enrolled in
4 GNETS."

5 Did you know if that was true when you read
6 the executive summary?

7 A I don't recall.

8 Q You read it in 2015?

9 A Right.

10 Q The report called for a State-level program
11 manager to oversee the program. Do you see that in the
12 second full paragraph under Summary of Findings?

13 A Yes.

14 Q "And the program manager should provide
15 technical assistance to help the 24 programs with data
16 collection and reporting and ensure the programs are
17 providing services on a consistent basis."

18 A Yes.

19 Q What is the reference to 24 programs?

20 A I believe is that it is the 24 GNETS programs.

21 Q Did you agree in 2015 that 24 GNETS programs
22 needed a State program manager?

23 A I did not have an opinion.

24 Q There's also a discussion of revising the
25 funding formula for the program. Do you recall that?

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1 A Yes.

2 Q What were the reasons that adjustments to the
3 funding formula were being considered?

4 A I don't know. I just remember reading that,
5 but I don't know why.

6 Q Have you heard that the GNETS program, the way
7 it is constructed, may provide a financial incentive
8 for local school districts to enroll individuals in
9 GNETS?

10 A No.

11 Q Did you watch the budget process with regard
12 to GNETS that we had last June in the State of Georgia?

13 A No.

14 Q The televised comments?

15 A No.

16 Q It says here, now I am referring to this
17 second, can you see my cursor?

18 A Yes.

19 Q I am referring to the second paragraph.
20 "Students have access," and that's referring to GNETS
21 students, "to regular classes and other school
22 activities if their individual education plan indicates
23 that these are appropriate."

24 Was that accurate to your knowledge?

25 A Give me just a moment, please.

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1 (Pause.)

2 A I don't know.

3 Q I am going to move now to Pages 16 and 17 of
4 the pdf which is 11 and 12 of the document. And this
5 relates to availability of resources and continuum of
6 care. Do you see that?

7 A Yes.

8 Q How did you understand the use of the words
9 "continuum of care" in this executive summary?

10 A Back then I didn't have an opinion on it. I
11 looked at the continuum of care being whatever options
12 were available in the local community.

13 Q It says that, "Outside of Metro Atlanta," this
14 is the last paragraph on 11 that carries over onto Page
15 12, "Outside of Metro Atlanta, resources such as mental
16 health services are at times limited and in some cases
17 very scarce."

18 Do you agree that that is an accurate
19 description of the state of affairs in Georgia in 2015?

20 A Yes.

21 Q And going over onto Page 12, it says, "Because
22 other services are not readily available or are so far
23 away, not a feasible alternative, GNETS becomes the
24 primary source for most services provided to the
25 students."

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1 Do you see that?

2 A Yes.

3 Q Did that worry you as of 2015, that GNETS was
4 the primary service provider rather than one of the
5 CSBs?

6 A I don't recall reading that in 2015. I don't
7 recall reading that, period, but that would cause me
8 concern.

9 Q Is it important that mental health services
10 are readily available to children across Georgia in
11 their own communities as an alternative to GNETS?

12 A Yes.

13 Q What role does DBHDD have in working to ensure
14 that mental health services are readily available to
15 children across the State in their own communities?

16 A A limited role, because their funding supports
17 uninsured children, so DBHDD plays a limited role, and
18 the network of providers is responsible for the
19 delivery who have contracts with the CMOs which are run
20 through DCH.

21 Q I am a little confused. Which is the State
22 agency that is responsible to ensure that mental health
23 services are readily available to children across the
24 State in their own communities?

25 A It is a combination, it is both DBHDD and DCH.

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1 Q So under your leadership, what steps did DBHDD
2 take toward that end of making services readily
3 available?

4 A The funding of APEX, the establishment of
5 crisis stabilization units, and for uninsured children,
6 a reimbursement mechanism to fund services that
7 otherwise could not be supported because there was no
8 other way to support them, and some prevention services
9 and some clubhouses which were after school programs
10 for children to go from 3:00 until 9:00 to provide
11 social skills, potentially individual and group therapy
12 settings, in a more, like a clubhouse, a place where
13 kids would want to go.

14 Q What role did DBHDD take with regard to the
15 students in the GNETS program when you were
16 Commissioner?

17 A I don't believe we took any role in providing
18 services to the GNETS programs.

19 Q And when you were Commissioner at DCH, what
20 was DCH's role in working to ensure that mental health
21 services were readily available to Medicaid-enrolled
22 children across the State in their own communities?

23 A Holding the care management organizations
24 accountable for delivering and offering a comprehensive
25 array of services to help children with serious

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1 emotional disturbance.

2 Q How were the care management organizations
3 held accountable by DCH?

4 A Contract management, potentially through
5 contract amendments, reviewing performance-based
6 indicators and things like that.

7 Q Did you play a role in directing the agency's
8 actions in that regard?

9 A Yes.

10 Q Did DCH review the services that were provided
11 by the GNETS program when you were Commissioner?

12 A Not that I recall.

13 MS. COHEN: We just lost service. Perhaps it
14 is a good time to take a break, take a ten-minute
15 break.

16 THE VIDEOGRAPHER: Off the record at 3:48 p.m.
17 (Recess.)

18 THE VIDEOGRAPHER: Back on the record at 3:54
19 p.m.

20 BY MS. COHEN:

21 Q So at the bottom of Page 11, carrying over
22 onto Page 12 of Exhibit 360, it is discussing the
23 service we have already talked about how services often
24 aren't available in the local school system. And it
25 says, the letter says, "Because other services are not

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1 readily available, or are so far away, not feasible to
2 an alternative, GNETS becomes the primary source for
3 most services provided to the students."

4 Was that true when you left DCH in 2021?

5 A I don't know, because there were so many
6 things that were put in place during COVID that I don't
7 know whether GNETS was the primary source --

8 Q Fair enough. Let me ask you, in February of
9 2020, just before the onset of COVID and I believe the
10 Governor shut the schools in March of 2020, but in
11 February of 2020, was this, was it still true that
12 GNETS was the primary source for most services provided
13 to students in areas where other services were not
14 available?

15 A I did not look at it that way.

16 Q You didn't look into it in 2019?

17 A I didn't look at it that way. I never looked
18 at GNETS as being the primary provider.

19 Q So you don't agree with this statement?

20 A I don't.

21 Q Did you advise the Governor's Office of Budget
22 and Planning?

23 A I did not.

24 Q Did you take any steps following reading as
25 much of this report as you read?

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1 A No.

2 Q Did you designate a member of your staff to
3 read the report?

4 A Yes.

5 Q Who was that?

6 A I believe it was Rachel King.

7 Q And did she come back to you and raise any
8 issues about this report?

9 A I am sorry, when was the this report given?

10 Q It was in 2015.

11 A No, that would have been Amy Howell in 2015.
12 And I don't recall a followup discussion.

13 Q So you asked Amy Howell to review the report
14 in 2015?

15 A What was the month?

16 Q January.

17 A I don't recall who I asked to look it over.

18 Q What was the charge you gave to Amy Howell in
19 January of 2015?

20 A I don't recall now. I may have misspoken. I
21 don't recall if I gave this report to anybody.

22 Q Well, thank you, Commissioner. Subject to any
23 questions your counsel may have -- I am getting a
24 question.

25 What was the role of earnings -- I am sorry,

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1 strike that.

2 What work are you doing for Ernst & Young now?

3 A I am helping states with transforming their
4 state agencies to become high-performing agencies of
5 state government.

6 Q So what are the specific tasks that you are
7 concerned with?

8 A Looking at are they organized, operationally
9 organized for success; are they utilizing their
10 internal team members to the highest possible way that
11 they can be utilized; are they meeting CMS requirements
12 as it relates to what's called modularity in regards to
13 billing and claims and -- claims, billing,
14 reimbursements, customer service, call centers; the use
15 of technology to help Medicaid authorities and state
16 agencies improve the way that they do customer service
17 interactions, project management; states that have big,
18 large project management challenges, helping them
19 figure out how to develop a project management team;
20 helping establish health care analytics offices;
21 predictive analytics so they can get better prepared
22 for what's coming down the pipe; helping them with
23 looking at, are they tapping into all of their Federal
24 resources as best as they can; how are they -- do they
25 need help with unwinding from the public health state

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1 of emergency; helping them with constituent care
2 coordination models that help agency heads and
3 directors have realtime information on how an
4 individual may be making their way or challenged
5 throughout the system and things like that.

6 Q You have a staff at E&Y that assists you with
7 that work?

8 A I do not. I work with a team of people but I
9 don't have a staff.

10 Q A team of people?

11 A Yes. I don't supervise anybody.

12 Q You don't supervise them?

13 A No.

14 Q But you work with a team?

15 A Yes.

16 Q Of other managing directors and their
17 subordinates?

18 A And senior managers and managers and other
19 managing directors and partners.

20 Q Which states are you currently consulting to?

21 A We are in discussion with several states of
22 ways to help them and the EY team is working very
23 actively in Maryland and in North Carolina in their
24 health and human service area. There is work in
25 Florida, some of which I am engaged in, and in some

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1 states that I am not.

2 Q Let me just consult with my colleague.

3 (Pause.)

4 MS. COHEN: We have nothing further subject to
5 any questions that your counsel may ask.

6 MR. BELINFANTE: I just have a few.

7 EXAMINATION

8 BY MR. BELINFANTE:

9 Q Commissioner, you were talking about your work
10 with E&Y. Do you do any work IN Georgia for E&Y?

11 A No.

12 Q Is that intentional?

13 A Yes.

14 MR. BELINFANTE: And I think that's all I've
15 got. Thank y'all.

16 MS. COHEN: Thank you.

17 THE VIDEOGRAPHER: We are off the record at
18 4:03 p.m.

19
20 (Deposition concluded at 4:03 p.m.)
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22
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D I S C L O S U R E

I, Richard Bursky, CCR, do hereby disclose pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that I am a Georgia CCR here as a representative of Appalachian Court Reporting (ACR), who was requested to take this deposition by Esquire Deposition Solutions, who was contacted by the party taking the deposition to provide court reporting services for this deposition.

Neither I, nor ACR, nor Esquire Deposition Solutions will be taking this deposition under any contract prohibited by O.C.G.A. Section 15-14-37(a) and (b), and not disqualified for a relationship of interest under O.C.G.A. 9-11-28(c).

Neither I, nor ACR, nor Esquire Deposition Solutions have any contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. The firm will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Firm Representative

Date

Appalachian Court Reporting

08/01/2022

Date

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CERTIFICATE OF COURT REPORTER

STATE OF GEORGIA)

COUNTY OF HENRY)

I hereby certify that the foregoing deposition was reported as stated in the caption, by the method of shorthand machine stenotype, and the questions and answers thereto were reduced to typewriting by me; that the foregoing pages represent a true, correct, and complete transcript of the evidence given on July 29, 2022, by the witness, Frank Berry, who was first duly sworn by me.

This the 1st day of August, 2022.



Richard Bursky, CCR
Certified Court Reporter
Certificate # 2509

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